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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

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1. The purpose of this section is to provide for the collection and dissemination of information regarding the activities of the various groups and individuals who are active in the field of human rights.

2. The information shall be collected and disseminated in a manner which will be consistent with the principles of confidentiality and the protection of the privacy of the individuals concerned.

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SECTION 13

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SECTION 19

1. The purpose of this section is to provide for the collection and dissemination of information regarding the activities of the various groups and individuals who are active in the field of human rights.

SECTION 20

1. The purpose of this section is to provide for the collection and dissemination of information regarding the activities of the various groups and individuals who are active in the field of human rights.

SECTION 21

1. The purpose of this section is to provide for the collection and dissemination of information regarding the activities of the various groups and individuals who are active in the field of human rights.

SECTION 22

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1. The first part of the report deals with the general situation of the country and the position of the various groups of the population. It is a general survey of the country and its people, and it is a very interesting and useful document for the study of the country and its people.

2. The second part of the report deals with the economic situation of the country. It is a general survey of the country and its people, and it is a very interesting and useful document for the study of the country and its people.

3. The third part of the report deals with the social situation of the country. It is a general survey of the country and its people, and it is a very interesting and useful document for the study of the country and its people.

4. The fourth part of the report deals with the cultural situation of the country. It is a general survey of the country and its people, and it is a very interesting and useful document for the study of the country and its people.

5. The fifth part of the report deals with the political situation of the country. It is a general survey of the country and its people, and it is a very interesting and useful document for the study of the country and its people.

6. The sixth part of the report deals with the military situation of the country. It is a general survey of the country and its people, and it is a very interesting and useful document for the study of the country and its people.

7. The seventh part of the report deals with the foreign relations of the country. It is a general survey of the country and its people, and it is a very interesting and useful document for the study of the country and its people.

8. The eighth part of the report deals with the internal security of the country. It is a general survey of the country and its people, and it is a very interesting and useful document for the study of the country and its people.

9. The ninth part of the report deals with the education of the country. It is a general survey of the country and its people, and it is a very interesting and useful document for the study of the country and its people.

10. The tenth part of the report deals with the health of the country. It is a general survey of the country and its people, and it is a very interesting and useful document for the study of the country and its people.

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FIGURE 10.—RELATIONSHIP OF YEARS OF EXPERIENCE AT MILLER GLEN BRIDGE AND CUMULATIVE DRAINAGE.

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Similarity matrix, the resulting parameters and corresponding confidence intervals for each variable are shown.

1

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[illegible]

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See online version: <http://dx.doi.org/10.1017/S0007122612000097>

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For purpose of this exhibit, the following is a list of the items which are being exhibited:

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Exhibit 1: Letter of Intent to the President of the United States, dated 10/10/1964, regarding the proposed legislation.

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EXHIBIT

Exhibit 2: Proposed legislation regarding the proposed legislation.

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EXHIBIT

Exhibit 3: Letter of Intent to the President of the United States, dated 10/10/1964, regarding the proposed legislation.

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Exhibit 4: Letter of Intent to the President of the United States, dated 10/10/1964, regarding the proposed legislation.

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1. The Commission has not yet issued its report on the subject of the proposed merger of the American Telephone and Telegraph Company and the Western Union Telegraph Company.

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Director; statement of expenditures and this budget items (Total)

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WISCONSIN STATE UNIVERSITY

Local function groups address relationships to conditions ; conditions

1994/1995

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Interpretation of the results of the study is limited by the following factors:

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TABLE 2. *Continued*

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Journal of Management Inquiry 18(1) 125-138

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LEGAL

Legal information regarding the activities of the various units and the status of the various units.

ADMINISTRATIVE

Administrative information regarding the activities of the various units and the status of the various units.

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Technical information regarding the activities of the various units and the status of the various units.

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"Hard copy"

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Information regarding the activities of the various units and the status of the various units.

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STATE OF NEW YORK

IN SENATE, January 10, 1911.
REPORT OF THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS.

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SECTION 2.

SECTION 3.

The Department of Corrections shall be organized and operated in accordance with the following principles:

SECTION 4.

The Department of Corrections shall be organized and operated in accordance with the following principles:

SECTION 5.

The Department of Corrections shall be organized and operated in accordance with the following principles:

SECTION 6.

The Department of Corrections shall be organized and operated in accordance with the following principles:

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SECTION 8.

SECTION 9.

The Department of Corrections shall be organized and operated in accordance with the following principles:

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The Department of Corrections shall be organized and operated in accordance with the following principles:

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PROPERTY

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1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the situation.

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Also mention; location of public housing units; participation

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5298

Expenditure on the project was estimated to be \$100,000. The project was approved by the City and County of Denver on 11/11/1988.

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Right to Information and Public Access to Information Act

10

1980

The EU is made up of 27 member states, all of which are democracies and have a written constitution.

1

Highland is being "sifted" nationwide with the field project being to provide with some nationwide to relevant officials/offices.

Family: *Araceae*, my old school. *Araceae* members are
often found in the same places as *Araceae*.

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ST. FRANCISCO CITY AND COUNTY

ST. FRANCISCO CITY AND COUNTY
ST. FRANCISCO CITY AND COUNTY

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ST. FRANCISCO CITY AND COUNTY

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ST. FRANCISCO CITY AND COUNTY

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§ 116. The following are the names of the persons who have been appointed to the various offices of the State of New York, since the last session of the Legislature, and who have taken the oaths of office and qualification, and are now acting as such officers:

SMT ATTORNEY SCOTSMAN 88

is also subject to the same conditions as the other two.

1506A, 57A

against the city and the property of erroneously paid excess salary. It is requested that the necessary steps be taken to recover the excess salary paid to the employee.

UNIVERSITY OF CALIFORNIA

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FIGURE 10.10.1

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Library and right to be read and call-
drawn as a group

TOLENT JACO

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2. *Explain the importance of the following factors in the development of a country's economy:*

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THE UNIVERSITY OF CHICAGO PRESS

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IC PATROL

How all types of communication to be sent to the officers or divisions -

1981/12/11 5728

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112)

Legislation to increase the number of judges on the federal bench is being considered by Congress.

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106

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35

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99

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19

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78

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109

TV, ASL, and Deaf

10-11-68

3 months

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Public Hearing; Board of Supervisors; Procedure for the selection of candidates for the Board of Supervisors.

REVISED 11/10/2009

CITATIONS

11/11/1951

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© 2004 Blackwell Publishing Ltd, *Journal of Internal Medicine* 255: 103–110

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1. *Journal of the American Medical Association*, 1997; 277: 1033-1038.

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Vacation; St. Mary's Hospital; Pacific Medical Center

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1. The first section of the report deals with the general situation of the country and the position of the various groups and classes of the population. It is a very general and superficial treatment of the subject, but it gives a good impression of the general state of affairs.

2. The second section deals with the economic situation of the country. It is a very detailed and thorough treatment of the subject, and it gives a good impression of the general state of affairs.

3. The third section deals with the social situation of the country. It is a very detailed and thorough treatment of the subject, and it gives a good impression of the general state of affairs.

4. The fourth section deals with the political situation of the country. It is a very detailed and thorough treatment of the subject, and it gives a good impression of the general state of affairs.

5. The fifth section deals with the cultural situation of the country. It is a very detailed and thorough treatment of the subject, and it gives a good impression of the general state of affairs.

6. The sixth section deals with the military situation of the country. It is a very detailed and thorough treatment of the subject, and it gives a good impression of the general state of affairs.

7. The seventh section deals with the foreign relations of the country. It is a very detailed and thorough treatment of the subject, and it gives a good impression of the general state of affairs.

8. The eighth section deals with the internal security of the country. It is a very detailed and thorough treatment of the subject, and it gives a good impression of the general state of affairs.

9. The ninth section deals with the education of the country. It is a very detailed and thorough treatment of the subject, and it gives a good impression of the general state of affairs.

10. The tenth section deals with the health of the country. It is a very detailed and thorough treatment of the subject, and it gives a good impression of the general state of affairs.

SAN FRANCISCO HOUSING AUTHORITY

Year 1969

Opinion No

APARTMENT HOUSES

License fees; federal housing authority; redevelopment agency of city and county and San Francisco housing authority

23

EXHIBIT 100

Is the following information true or false?
The above information is true.

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RESTRICTIONS

Use; right to restrict use of library by teacher and school children as a group

June 1989

SAN FRANCISCO PUBLIC LIBRARY

Volume 10

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Year 1963

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Division of

LIBRARY

General Services Division
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Year 1969

Opinion No

October 20

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60

USE OF

Exemption of certain property from taxation for purposes of collecting taxes levied on individuals

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Exemption of certain property from taxation for purposes of collecting taxes levied on individuals

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USE OF

Exemption of certain property from taxation for purposes of collecting taxes levied on individuals

60

Year 1969

THE ECONOMIC SOCIETY

Opinion no

REVISION 1969

Revisions, including the revision and new comments to editor
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and other ways to be used for the improvement

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to be used as evidence in the trial of the defendant.

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computing, and bonded, dress
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Federal Government
 National Land Apartments; tax on personal property of the

Senior of class; property status; legality of proposal to grant tax credit to senior citizens on tax bill

FIELD

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Organic field research

WZLTV

1949

2457

Notes: Powers of local supervisors in fixing or modifying rates to be charged by taxicabs

2010

children as a group
Libraries; this restricted use of library by general and school

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License; effect of law prohibiting sales of psychiatric technicians
unless licensed

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VEITASHI HE

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2007

VI. CALIFORNIA

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vacation benefits for naval personnel

Port of San Francisco; and the city and county the zone property under jurisdiction of the port commission

Commander; "regular full-time permanent employee"

Payment of health care and related charges

Israel and the United States

Transport Workers

TRANSACTIONS
of the
American
Institution
of
Civil Engineers

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10/10/01 BY 60322 UCBAW

TAX COLLECTOR

Year 1969

Opinion No

SAN FRANCISCO POUND

License fees; animal license collection

81

Library: none. In printed form of Library or binder and none.
 secured by a stamp.

More scientific study of wild populations of herring in past projects; Department Science and Culture Office, Tokyo

12

Particular and interesting cases include various diastrophic patterns and ankylosing spondylitis, together with the black rhinoma and club

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THE CHAIRMAN

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11 (b) (7) (D) - The right of a person to receive a pension or annuity from a private pension plan or a profit-sharing plan.

12 (b) (7) (E) - The right of a person to receive a pension or annuity from a private pension plan or a profit-sharing plan.

13 (b) (7) (F) - The right of a person to receive a pension or annuity from a private pension plan or a profit-sharing plan.

14 (b) (7) (G) - The right of a person to receive a pension or annuity from a private pension plan or a profit-sharing plan.

15 (b) (7) (H) - The right of a person to receive a pension or annuity from a private pension plan or a profit-sharing plan.

16 (b) (7) (I) - The right of a person to receive a pension or annuity from a private pension plan or a profit-sharing plan.

17 (b) (7) (J) - The right of a person to receive a pension or annuity from a private pension plan or a profit-sharing plan.

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1000 Street; allotment

1000 Street; allotment; act 1913 of the department; patronage

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... and the actual collection ... relationship of the ... the dead and ...

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SECRET

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2532 or 2533; probably revision

refers something it may be found on 921 and

U.S. version of 1948

new data on the effects of the poll and the
effect of the poll on the results of the election.

to create position

Butcher's redevelopment plan

[Faint, illegible handwritten notes]

Mr. J. J. Reilly, Police Department, New York City

and be done by other employees
new business firms provide services that will pay reasonable wages
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Year 1955
April 10

-3-

88

for society to collect fees for and improvements
into a large museum with the botanical society
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and control; authority of reservation and park commission

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82

January 4, 1969

Mr. George J. Grubb
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California

Subject: Employment of Noncitizens under
Section 1947 of the Labor Code

Dear Mr. Grubb:

This is in response to your letter regarding the effect of section 1947 of the Labor Code which authorizes public employment of noncitizen residents of California who have indicated their intent to become citizens of the United States.

Section 1947 of the Labor Code, effective November 17, 1968, provides:

"This article shall not apply to any noncitizen who is a resident of the State of California and who has indicated his intent to become a citizen of the United States."

The "article" referred to in section 1947 is article I entitled "Employment of Aliens" which commences at section 1944 of the Labor Code. It generally prohibits employment of any person by the state, any county or city unless such person is a citizen of the United States, except positions are designated in sections 1944 and 1945.

The Charter required that all officers and employees of the city and county shall be citizens of the United States (Art. I, Sec. 144, Charter). I have previously concluded in Opinion No. 27-2-a.

Year 1929

LOCAL ADMINISTRATOR

Official No.

NOT PROTECTED

jurisdiction of the port commission
authority of city and county to take property under the

82

January 9, 1969

Mr. George J. Grubb
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California

Subject: Employment of Noncitizens under
Section 1947 of the Labor Code

Dear Mr. Grubb:

This is in response to your letter regarding the effect of section 1947 of the Labor Code which authorizes public employment of noncitizen residents of California who have indicated their intent to become citizens of the United States.

Section 1947 of the Labor Code, effective November 13, 1968, provides:

"This article shall not apply to any noncitizen who is a resident of the State of California and who has indicated his intent to become a citizen of the United States."

The "article" referred to in section 1947 is article 2 entitled "Employment of Aliens" which commences at section 1940 of the Labor Code. It generally prohibits employment of any person by the state, any county or city unless such person is a citizen of the United States. Exempt positions are designated in sections 1944 and 1945.

The Charter requires that all officers and employees of the city and county shall be citizens of the United States (§§7 & 144, Charter). I have previously concluded, in Opinion No. 67-47-A

Mr. George J. Grubb

-2-

January 9, 1969

relative to the employment of persons in the New Careers Program, that the state law relating to citizenship requirements and the exceptions permitted under that law (§§1944, 1945, Labor Code) are applicable to the city and county. (See City of Pasadena v. Charleville, 215 Cal. 384.) It is therefore my opinion that section 1947 of the Labor Code is applicable to the city and county to authorize employment of noncitizens who are residents of California and who have indicated an intent to become United States citizens if such noncitizens are otherwise eligible for city and county employment.

The phrase "indicated his intent to become a citizen" should be interpreted in conjunction with federal and state laws. The procedure for naturalization of aliens is prescribed by federal law (8 U.S.C., §1421 et seq.). An applicant for United States citizenship must be a resident of the United States for five years (8 U.S.C., §1427(a)) and he shall have attained 18 years of age (8 U.S.C., §1445(b)). Any alien over 18 years of age who is residing in the United States may file a "declaration of intention to become a citizen of the United States in such form as the Attorney General shall prescribe" but the filing of such a declaration is not a condition precedent to filing a petition for naturalization (8 U.S.C., §1445(f)). The filing of a declaration of intention at one time was mandatory but since 1952 it is merely permissive. It confers no special advantages on the alien-declarant but in some states an alien who makes a declaration of intention to become a citizen has been entitled to certain civil and political rights (Boyd v. State of Nebraska, 143 U.S. 135; 36 L.Ed. 103; 12 S.Ct. 375).

It is noted that under sections 1944(a), (f) and (i) of the Labor Code, teachers, professional persons and child care program employees may be employed by public agencies provided they declare their intention to become citizens. This may be accomplished by filing a specific document provided for under federal law. (See: 8 U.S.C., §1445(f).) In enacting section 1947 of the Labor Code, however, the Legislature did not require this declaration of intention but merely provided that such noncitizen indicate his intent to become a citizen of the United States. In one sense, section 1947 is more restrictive in that it also requires that the noncitizen be a resident of the State of California, a requirement not present in sections 1944(a), (f) and (i). However, as to demonstration of intent to become a citizen the section appears to be liberalized in that it merely provides that the noncitizen has indicated his intent to become a citizen. In making this material

Mr. George J. Grubb

-3-

January 9, 1969

change in language in the same article, it must be presumed that there was a different legislative purpose and intent. (See Lundquist v. Lundstrom, 94 Cal.App. 109; Pierce v. Riley, 21 Cal. App.2d 513; Directors of Fallbrook Irrigation District v. Abila, 106 Cal. 355.)

The word "indicate" and its variants have received judicial consideration by the courts and their use in statutes has been sustained as against the contentions of vagueness and indefiniteness. (See People v. Steel, 35 Cal.App.2d Supp. 748; People v. Smith, 36 Cal.App.2d Supp. 748; Sunseri v. Board of Medical Examiners, 224 Cal.App.2d 309; Zinc Engravers v. Bowers, 151 N.E.2d 226.) But, to insure uniform application of section 1947 of the Labor Code, the noncitizen applicant for city employment should be required to indicate to the employing agency his intent to become a citizen in some overt manner. The noncitizen could, for instance, show that he has filed a petition for naturalization or declaration of intention to become a citizen under federal law. In the alternative, his indication of intention to become a citizen could be shown by his execution of an affidavit that he has a present intention in good faith to become a citizen of the United States at some indeterminate time in the future, which is all that is required in executing a declaration of intention to become a citizen under federal law.

It is further noted that section 1947 of the Labor Code contains no provision for termination of those noncitizen employees who fail to become citizens when eligible therefor. Accordingly, in absence of such provision a noncitizen who at the time of his employment has indicated his intention to become a citizen can continue in his employment even though he fails to become a citizen at some later date. However, section 147 of the Charter provides, in part, that "Any eligible securing standing on a list by fraud, concealment of fact or violation of commission rules shall be removed from such list and if certified or assigned to a position, shall be removed therefrom." Therefore, under this provision, if it could be proven that a noncitizen obtained employment by fraudulently indicating his intent to become a citizen, when in fact he had no such intention, then such noncitizen could be removed from employment, not on the basis of being a noncitizen, but for the reason that he secured employment by his fraudulent act.

You are thus advised.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

January 13, 1969

Honorable Jack Morrison
Board of Supervisors
235 City Hall
San Francisco, California

Subject: Golden Gate Bridge; Use of Revenue
Therefrom to Subsidize San Francisco-
Marin Ferry Service

Dear Supervisor Morrison:

This is in response to your request for an opinion as to the possible use of Golden Gate Bridge revenue to subsidize ferry boat service between San Francisco and Marin County.

The Golden Gate Bridge and Highway District was organized pursuant to the provisions of the Bridge and Highway District Act (Streets and Highways Code, Secs. 27000-27325) and is entitled thereby to exercise the powers expressly or impliedly conferred upon it therein (Streets and Highways Code, Secs. 27020, 27172).

Among the express powers conferred upon the District by the Act are those set forth in Section 27164 of the Streets and Highways Code, which reads as follows:

"§27164. The district may acquire, or contract to acquire, and may construct under contract, or by its own employees, maintain, improve and operate bridges, abutments, rights of way, roads, tunnels, railroads, streetcar lines, interurban lines, telephone and telegraph lines, footpaths, viaducts, tollgates, tollhouses, subways, and all other forms of property necessary or proper for the successful prosecution of the project for which the district was organized, or which may be authorized by the board of directors of the district under its powers in this chapter, including all machinery or other property useful or necessary to construct, maintain, operate or otherwise make use of toll bridges and highways, and complete, add to, repair or otherwise improve any of such property acquired by it."

Honorable Jack Morrison

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January 13, 1969

In view of the absence of an express power conferred upon the District to acquire or operate ferries, such a power could be exercised only if it could be established that it was necessary for the successful prosecution of the project for which the District was organized.

The Golden Gate Bridge and Highway District was organized for the purpose of "bridging of the Golden Gate" between San Francisco and Marin counties (Doyle v. Jordan, 200 Cal. 170, 189; Ordinance No. 6569 (new series) adopted April 17, 1925; Vol. 20 (new series) Journal of Proceedings, Board of Supervisors, p. 107) and, in my opinion, it does not appear that it could be established that acquisition and operation of a ferry service between San Francisco and Marin is necessary for the successful prosecution of this project.

However, express power could be conferred by statute upon the Golden Gate Bridge and Highway District to acquire and operate ferries between termini located in San Francisco and Marin counties by amending Streets and Highways Code Section 27154, supra, to so provide.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

JJS

January 14, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Procedure Required to Abandon
Candlestick Park

Dear Mr. Dolan:

This is in response to your request for an opinion as to the legal requirements to abandon Candlestick Park as a stadium contemplating that the re-use of the property would be for housing. Further, you request what method might be utilized to divert its present dedicated purpose to other uses.

For a more complete answer to the questions posed above it is necessary that some background information be developed. Candlestick Park, now consisting of approximately 127 acres, was assembled by various methods at the time the stadium was constructed. Approximately 37.8 acres of land was acquired from the State of California consisting of submerged streets in the area and a 200-foot wide railroad right of way extending in a general north-south direction over the present parking area.

A portion of Bayview Park was used and it is upon this land that a portion of the stadium proper is constructed. By Ordinance No. 3533 (new series) adopted December 18, 1915, Bayview Park was dedicated for park purposes and was placed under the control of the Park Commissioners. The balance of the property was acquired by eminent domain proceedings authorized by Resolution No. 235-58, adopted March 24, 1958. A portion of the resolution is quoted in part as follows:

"BE IT FURTHER RESOLVED, That said lands are suitable, adaptable, necessary and required for the public use of said City and County of San Francisco, to wit:

"Public park purposes, . . ."

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January 14, 1969

The property description in the resolution covers the entire 127 acres of Candlestick Park declaring it to be a public park.

Since it has been dedicated for park purposes and is under the jurisdiction of the Recreation and Park Commission, the Charter of San Francisco would apply, specifically Section 41.1, which provides in part as follows:

"... and provided further that the general laws of the State of California authorizing municipal corporations to abandon or to discontinue the use of land for park purposes, authorizing the sale or other disposition of such lands, and providing procedures therefor and for matters relating thereto, shall be applicable to the City and County of San Francisco and to all lands held or used by it for park purposes and shall govern and control exclusively in respect thereto."

This section of the Charter was added by vote of the electorate in 1949, and generally provides that no park land can be abandoned or its use discontinued unless the general laws of the state authorizing the abandonment of land for park purposes has been complied with.

The state law referred to in Section 41.1 is found in the Government Code of the State of California which provides for three different types of situations whereby municipal corporations are authorized to abandon or discontinue land for park purposes. The legal method of abandonment that will be used is dependent upon how the land was originally acquired and its use for park purposes after acquisition. Specifically, Sections 38440 to 38462 of the Government Code provide the procedure for discontinuing and abandoning a public park. These sections generally provide for a noticed public hearing after adoption of a resolution of abandonment by the Board of Supervisors, publication of notice, posting of notice for the hearing, and the filing of protests which, after filing, would require a two-thirds vote of the Board of Supervisors to place the matter on a special election for approval by the electorate of the City. All this must be done before any or part of Candlestick Park could be disposed of for any use other than its present use as a park. The provisions of the Charter and the Government Code are mandatory, and without a special election the present use of Candlestick Park cannot be changed.

Mr. Robert J. Dolan

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January 14, 1969

In summary, you are advised as follows:

1. All of the property acquired either by eminent domain action or by grant from the State of California is park land.

2. The other portions of land used for Candlestick stadium were acquired some years ago and placed under the jurisdiction of the former Park Commission in 1915 for park purposes.

3. Pursuant to Section 41.1 of City's Charter, land dedicated and used for park purposes cannot be abandoned without complying with the procedures of the Park Abandonment Act of 1949 in the Government Code, which requires a vote of the electorate before the use of the park lands can be changed to a use not of park nature.

Very truly yours,

RAK

THOMAS M. O'CONNOR
City Attorney





OFFICE OF

CITY ATTORNEY

CITY AND COUNTY OF SAN FRANCISCO

THOMAS M. O'CONNOR
CITY ATTORNEY

206 CITY HALL
SAN FRANCISCO 94102
CALIFORNIA

January 15, 1969

Civil Service Commission
151 City Hall
San Francisco, California

Attention: Mr. Harry Albert, Assistant
General Manager, Personnel

Subject: Civil Service Classification
for Harbor Police

Gentlemen:

This refers to your request for an opinion concerning the civil service classification which the Civil Service Commission has adopted for Harbor Police when the Port is transferred from State to City jurisdiction effective February 7, 1969.

You state that pending determination of certain questions and in order to continue the Harbor Police as City and County appointees after February 7, 1969, the Civil Service Commission has classified these employees in the same class titles and salary schedules as they had under State jurisdiction. 17 employees and 2 vacant positions have been classified as 9350 Harbor Policeman at a salary schedule \$644-783; 4 employees have been classified as 9351 Harbor Police Sergeant at a salary schedule \$746-905; 1 employee has been classified as 9352 Police Captain with salary schedule of \$863-1048.

Your principal question is: Should the Harbor Police be classified by the Civil Service Commission under the same classification as officers of the San Francisco Police Department (Division Q - Police Service). In my opinion the Harbor Police should not be classified under the Division Q - Police Service classification which the Civil Service Commission has adopted for members of the San Francisco Police Department.

The duties and obligations of the City and County respecting port employees who will become City employees after February 7, 1969 are set forth in Section 20 of California Stats. 1968, Ch. 1333; Charter Section 48.4 and Section VIII



CITY AND COUNTY OF SAN FRANCISCO

AS M. O'CONNOR
CITY ATTORNEY
CITY HALL

Civil Service Commission

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January 15, 1969

of the Agreement relating to the transfer of the Port of San Francisco from the State of California to the City and County of San Francisco. Copies of these provisions are appended to this opinion as follows: Appendix "A" - Charter Section 48.4; Appendix "B" - Section 20 of California Stats. 1968, Ch. 1333; Appendix "C" - Section VIII of Agreement relating to transfer of the Port of San Francisco. The charter provision, State statute and Agreement show that the City and County of San Francisco is under the obligation and duty to continue the Port police in their respective positions and to give them the same rights, benefits and privileges which such persons have or might have had had such persons been originally appointed to their respective positions under certification from the Civil Service Commission.

The California State Personnel Specifications for classes of Harbor Policemen, Sergeant and Captain are appended as Appendix "D." The San Francisco Civil Service Commission Classification for Q-2 Policeman, Q-50 Sergeant and Q-280 Captain are appended as Appendix "E."

A comparison of these classifications shows that the positions in the San Francisco Police Department and the positions of Harbor Police are not the same. The Attorney General, in an opinion relating to the law enforcement duties of the Harbor Police of the San Francisco Port Authority, stated as follows:

"It is our opinion that the law enforcement duties of the harbor police are (1) to regulate traffic on harbor property, (2) to guard and patrol the property under the control of the port authority, and (3) to maintain law and order in the exercise of these functions. We reach this conclusion by implication from the sections of the Harbors and Navigation Code which charge the San Francisco Port Authority with management and control of certain state property. See, e.g., §1732.5 (supervision of dock system and State Belt Railway); §1770 (geographical definition of property under authority's control); §1772 (additional property under authority's control). We further conclude that these duties do not extend to investigating crimes at all. Neither the Legislature nor the authority has seen fit to delegate general law enforcement responsibility to the harbor police, and absent some such delegation we feel constrained not to imply such powers or duties.



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CITY ATTORNEY
CITY HALL

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January 15, 1969

"It should be made clear that this limitation leaves no gap in general law enforcement in the harbor area. The San Francisco Police Department has the duty of investigating and preventing crimes on harbor property, since the property in the possession and under the control of the port authority lies within the City and County of San Francisco. See Harb. & Nav. Code §1770; Gov. Code §23138. Under section 35.7 of the Charter of the City and County of San Francisco, the chief of police is charged with all of the law enforcement responsibility formerly placed in the sheriff, including the duty to investigate all public offenses which have been committed within the city and county. See Gov. Code §26602. . . ."

The Harbor Police perform limited police duty and do not engage in general law enforcement as is required under the Division Q classification for policeman, sergeant and captain of the San Francisco Police Department. It is my opinion that Harbor Police should not be classified as police officers of the City and County of San Francisco and the separate classifications approved by the Civil Service Commission for Harbor Police positions for City employment are legal and proper classifications under the circumstances.

You are so advised.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

Attachments

APPENDIX "A"

New Charter Section 48.4

Section 48.4. All employees of the Port Authority who, at the time the transfer provided for herein shall go into effect, are members of the Public Employees' Retirement System of the State of California shall continue to be members of said Public Employees' Retirement System, with all the rights, privileges and benefits of said system and they shall not be members of the San Francisco City and County Employees' Retirement System; and, notwithstanding any other provisions of this charter, the city and county shall perform all acts necessary to continue the membership of such employees in said Public Employees' Retirement System.

All employees of the Port Authority who, at the time the transfer provided for herein shall go into effect, are covered under the provisions of a retirement program other than the Public Employees' Retirement System of the State of California shall thereafter continue to be covered under such retirement program and they shall not be members of the San Francisco City and County Employees' Retirement System; and, notwithstanding any other provisions of this charter, the city and county shall perform all acts necessary to continue the coverage of such employees under such retirement program.

Persons who, after the transfer provided for herein has gone into effect, becomes employees of the city and county in positions related to the operation of the State Belt Railroad and who become covered under the provisions of the Railroad Retirement Act by virtue of their employment in such positions shall not be members of the San Francisco City and County Employees' Retirement System.

* * * * *



APPENDIX "B"

Section 20 - Cal. Stats. 1968, Ch. 1333

Section 20. All persons actually employed in the service of the San Francisco Port Authority at the time this act takes effect and who at said date shall be entitled to the benefits of the civil service provisions of the State of California insofar as the same may be applicable to the employees of the San Francisco Port Authority, shall be continued in their respective positions and shall continue to hold their positions pursuant to the civil service provisions of the Charter of the City and County of San Francisco and they shall

be entitled to all of the rights, benefits, and privileges which such persons might have or might have had, had such persons been originally appointed to their respective positions under certification from the civil service commission of the City and County of San Francisco, and in the matter of seniority in service of such employees entitled to the benefits of said civil service provisions as herein provided, the seniority of each employee shall be reckoned from his first permanent appointment to employment under the State of California, and as to their respective positions such employees shall have preference over all other employees of the City and County of San Francisco. The employment rights of such state employees shall be fully protected at the time of the transfer authorized by this act. Salary, employment conditions, and benefits shall be no less than those received by the employees of the San Francisco Port Authority at the time of transfer. These rights and benefits include, but are not limited to: probationary or permanent civil service status, and any career executive appointments; retention of employees' positions on existing subdivisional and departmental promotional and eligible lists, as long as they are in effect; no less than the same wage and salary range for comparable classes; overtime and shift premium pay whenever and wherever applicable; callback and standby pay whenever and wherever applicable; continued membership in the Public Employees' Retirement System provided by the City and County of San Francisco, or any other retirement program in effect with the San Francisco Port Authority; retention of vacation and sick leave balances which such employees now have when they become employees of the City and County of San Francisco; waiver of residence requirements; and retention of the option to continue any present health insurance and group life coverage. Upon assent to the transfer of lands as authorized by this act by the City and County of San Francisco, any employee desiring to transfer to another state agency or to be placed on a state layoff list may do so within six months of such assent and shall retain all state civil service rights and benefits.



Section VIII of Agreement relating to
Transfer of the Port of San Francisco
from the State of California to the
City and County of San Francisco

VIII. TRANSFER OF EMPLOYEES

Section 20 of the Act provides that the employees of the San Francisco Port Authority who at the time of the transfer are entitled to the benefits of the civil service provisions of the State of California shall be continued in their respective positions and shall continue to hold their positions pursuant to the civil service provisions of the charter of the City of San Francisco. The Act further defines the rights of these employees. The charter provisions which will be submitted to the voters on November 5, 1968, and particularly Section 48.4 thereof, further define the rights and privileges of the transferred employees. This agreement shall not be deemed to limit any of the rights or privileges afforded the employees under either the Act or the charter provisions but is intended only to correct ambiguities or reaffirm those rights.

It is agreed by the parties that the date at which the benefits of civil service provisions will be determined shall be the date of the transfer of the property. An employee who qualifies under this provision is any employee regularly certified and appointed from an eligible list. This includes State Belt Railroad employees who do collectively bargain but are employees entitled to civil service provisions which provisions govern their status over matters for which they have not collectively bargained. At the time of transfer there may be some temporary or casual employees who do not have the benefit of civil service

provisions. The rights of an employee in this status will terminate as it would had the property not been transferred to the City. Other employees may, however, be on temporary appointment awaiting civil service examination. In that event the City will schedule the necessary examinations as soon as possible so as to insure continuity of employment whenever possible.

It is agreed by the parties that on matters of seniority for transferred employees the City shall set up a seniority system using the date of the first permanent appointment to employment under State employment in the same manner and to the same extent as if the employee had in fact been employed under the City system. The schedule now set up by the City shall, therefore, be extended to the transferred employees in accordance with the terms of the Act and this agreement.

The Act provides for the retention by the transferred employees of salary, employment conditions and benefits. At the present time permanent State employees have equal or greater sick leave and vacation privileges than provided for by City civil service. To carry out the provisions of the Act the City shall permit the transferred employees to carry over to City service all accumulated sick leave and to continue to accumulate sick leave as the employee would have accumulated that sick leave had he remained in State service. Vacation rights shall likewise be carried over. Where the employee has greater vacation rights under State service he shall continue to accrue vacation rights in the same manner and to the same extent as if he had remained in State service. Some employees have group insurance or other insurance policies which may be dependent on membership in the California State Employees

Association or some other group association or arrangement that may not be available to the employee by reason of the transfer. If these employees will no longer be eligible for this membership the City agrees to assist the employees in whatever way is necessary to continue these insurance policies. In the event that the carrier requires additional contribution from the employee by reason of the discontinuance in a group membership and in the event the City cannot satisfy the carrier with membership in its own group for the purpose of continuing the policies without change in amount or benefits, the City agrees to compensate the employees for any additional charges that may be required by the carrier by reason of the employee's loss of membership in the group or supply equivalent insurance with some other carrier.

The State presently provides a contribution toward payment of the employee's health insurance plan. This payment shall be continued by the City for each transferred employee in the same amount as is at any time allowed by the State.

Port employees are presently allowed to select their own doctor and hospital when receiving benefits under Workmen's Compensation. These rights shall be continued by the City for each transferred employee so long as the practice is permitted by the insurance carrier.

An employment condition and benefit of the transferred employees is the right to take competitive examinations for other positions in State service. Six months after the transfer the transferred employees will have lost this right in State service, but the City shall afford a similar right in City service in the

same manner and to the same extent as it would afford to the employees had they been city employees originally. If the employees are accepted in the new positions they shall retain such additional benefits as they had under this agreement with reference to the State Employees Retirement System, vacation rights, sick leave, insurance privileges and similar benefits.

Each employee eligible for transfer shall be notified by the Port Authority of his right to transfer to another State agency or to be placed on a State layoff list within six months from the date of transfer.

Section 20 of the Act provides the employee shall retain his position on existing subdivisional and departmental promotional and eligible lists as long as such lists are in effect. The employee on such list shall be certified from the list in the same manner and to the same extent as if the employee had remained in State service.

Section 20 of the Act provides the employee shall retain overtime and shift premium pay whenever and wherever applicable. These benefits shall be afforded by the City in the same manner and to the same extent as if the employee had remained in State service.

Section 20 of the Act provides the employee shall have callback and standby pay whenever and wherever applicable. These benefits shall be afforded by the City in the same manner and to the same extent as if the employee had remained in State service.

Section 20 of the Act provides the City shall waive residence requirements for the transferred employees. The City agrees it shall permit the transferred employees to reside in any area whatever without limitation.

Section 20 of the Act provides the transferred employees shall have continued membership in the Public Employees Retirement System. The City shall permit the transferred employees to continue to be members of the Public Employees Retirement System with all the rights, privileges and benefits of said system, and they shall not be members of the San Francisco City and County Employees' Retirement System. The City shall perform all acts necessary to continue the membership of such employees in said Public Employees Retirement System.

Employees of the State Belt Railroad are not members of the Public Employees Retirement System of the State of California but are covered under the provisions of the Railroad Retirement Act. Such employees shall not be required to be members of the San Francisco City and County Employees' Retirement System but may continue to be covered under the provisions of the Railroad Retirement Act.

Section 20 of the Act requires that the transferred employees shall retain their option to continue any present health insurance and group life coverage. The City agrees to perform all acts necessary to insure that these rights will be carried out in the same manner and to the same extent as if the employee had continued in State service. In the event this cannot be accomplished without the payment of additional premium the City shall compensate the employee for the cost of the additional premium.

Employees who are employed after the date of transfer shall be and become City employees and their rights shall not be affected by Section 20 of the Act or by this agreement.

CALIFORNIA STATE PERSONNEL BOARD

specification for the class of

HARBOR POLICEMAN

CODE # 8362
Established: 5/23/47
Revised: 12/17/64
Title Changed: --

Definition:

Under direction, to patrol an assigned area of the San Francisco waterfront which is under jurisdiction of the San Francisco Port Authority and to do other work as required.

Job Characteristics:

Employees in this class may ride a motorcycle, drive a car, or do patrol work on foot. They are armed, may patrol alone or in pairs, and are required to work on either a day or night shift.

Typical Tasks:

Patrols the Embarcadero and guards all State property, including buildings, wharves, streets, railroad sidings, and similar properties in an assigned area along the San Francisco waterfront; stops drivers who are operating vehicles in violation of the California Vehicle Code, directs traffic at intersections; keeps the State Belt Railroad rights of way cleared; enforces parking regulations; makes reports on accidents, property damage, fires, and similar matters; checks license plates in searching for stolen cars; keeps alert for fire hazards, burglaries, or disturbances; issues citations; makes arrests of intoxicated persons, beggars, and other vagrants; appears in court as required; gives first aid to injured persons in emergencies; answers calls of complaint and sees that proper corrective measures are taken; controls crowds during parades or other assemblies; gives information to the public concerning streets, buildings, and places of interest; occasionally escorts emergency vehicles; prepares reports as required.

Minimum Qualifications:

Education: Equivalent to completion of the 12th grade. (Experience in police work for a public jurisdiction may be substituted for two years of the required education on a year-for-year basis.)

and

Knowledges and abilities:

General knowledge of: city traffic problems, and directing a heavy volume of city automobile and truck traffic; laws of arrest and legal rights of citizens.

Working knowledge of: first aid and use and care of small firearms.

Knowledge of: police and crime prevention methods.

Aptitude for: law enforcement work.

Ability to: direct a heavy volume of city automobile and truck traffic; think clearly and logically; cooperate with representatives of other law enforcement agencies; think and act quickly in emergencies.

and

Special personal characteristics: Willingness to work at night and to report for duty at any time when emergencies arise; satisfactory record as a law-abiding citizen; good personal appearance and poise; good memory for names, places faces, incidents, and license numbers; courage, alertness, keenness of observation, firmness, and tact.

and

Physical requirements: Sound physical condition, strength, endurance, and agility; normal hearing; normal visual function and visual acuity, not less than 20/40 in each eye without correction and corrected to 20/20; normal color vision; height not less than 5'9" and not more than 6'4"; waist measurement not in excess of the measurement of the chest in repose.

Age limits for participation in examination: 21 - 40 years.

Monthly Compensation: ~~\$535-562-590-619-650-~~

614 644 676 710 746

Effective 7/1/57

Work Week Group: 1

Note: Salary information for this class was correct on 12/21/64.
Any subsequent salary changes have not been recorded.



CALIFORNIA STATE PERSONNEL BOARD

specification for the class of

CODE: 8361
Established: 7/2/52
Revised: 12/17/64
Title Changed: --

HARBOR POLICE SERGEANT

Definition:

Under direction of a superior officer, on a regular shift or special assignment, to supervise Harbor Policemen in patrolling State buildings, premises, and equipment, under the jurisdiction of the San Francisco Port Authority, to protect them from damage, trespass, or theft, to respond to calls for police assistance, and to direct and give information to the public; and to do other work as required.

Typical Tasks:

Assigns and checks the work of Harbor Policemen; makes arrangements and assigns personnel to special details for holiday functions, special activities or projects on the waterfront; makes special parking arrangements, takes calls on enforcement problems, and gives information to the public; answers calls of complaint and sees that proper corrective measures are taken; takes charge of situations in case of emergencies or accidents; supervises the training of new recruits and the retraining of the regular force; evaluates the performance of personnel and takes or recommends appropriate action; makes arrests and testifies in court as necessary; keeps daily attendance, work, and other records, and prepares reports.

Minimum Qualifications:

Either I

One year of experience performing the duties of a Harbor Policeman in the California state service.

Or II

Experience: Two years of full-time paid police experience comparable to that of a Harbor Policeman in the California state service; and
Education: Equivalent to completion of the twelfth grade. (Additional qualifying experience may be substituted for two years of the required education on a year-for-year basis.)

and

Knowledge and abilities:

Wide knowledge of: laws of arrest and rules and evidence, legal rights of citizens, and court procedures.

General knowledge of: modern principles and practices of police administration and organization; first aid and use and care of firearms; State traffic laws and principles of traffic control and safety; principles of supervision.

Ability to: plan, organize, and direct the work of a group of policemen, and train the men in the performance of their duties; maintain cooperative relations with those contacted in the work; speak and write effectively and prepare clear and concise reports; analyze situations accurately and take effective action.

and



Harbor Police Sergeant

-2-

Special personal characteristics: Willingness to work irregular hours and at any time of emergency; normal hearing and normal vision or vision corrected to normal.

Monthly Compensation: \$619 650 683 717 753

Work Week Group: 4A

Note: Salary information for this class was correct on 12/21/64.
Any subsequent salary changes have not been recorded.

CALIFORNIA STATE PERSONNEL BOARD

specification for the class of

CODE # 8360
Established: 8/8/58
Revised: 12/17/64
Title Changed: --

HARBOR POLICE CAPTAIN

Definition:

Under general direction, to plan, organize, and direct the work of the Harbor Police force and other security personnel in the protection of State buildings and premises against damage, trespass, or theft and in the maintenance of order on premises of the San Francisco Port Authority and direction of the public thereon; and to do other work as required.

Typical Tasks:

Plans, organizes, and directs the work of the Harbor Police force in protecting State buildings, premises, and equipment against damage, trespass, or theft and in controlling and expediting traffic; coordinates the activities of the Harbor Police with the San Francisco Police Department, United States Navy, Coast Guard, Customs Service, Immigration Service, and with private security personnel in police and security problems at the Port of San Francisco; assigns duties to the staff and arranges for special details; establishes rules and regulations for the efficient operation of the force; trains officers in the proper performance of their duties; reviews arrest and incident reports; enforces discipline and maintains efficiency records; inspects officers and their equipment; directs Civil Defense planning and activities; answers calls of complaint and sees that proper corrective measures are taken; plans traffic routing and parking regulation; maintains records, prepares correspondence and reports.

Minimum Qualifications:

Either I

Two years performing the duties of a Harbor Police Sergeant or five years performing the duties of a Harbor Policeman in the California state service.

Or II

Experience: Five years of full-time paid police experience, two years of which shall have been in a capacity at least comparable to a sergeant in a city police organization, with supervision of at least ten officers; and

Education: Equivalent to completion of the twelfth grade. (Additional full-time paid police experience may be substituted for not more than two years of the required education on a year-for-year basis.)

and

Knowledges and abilities:

Wide knowledge of: principles and practices of police administration and organization; laws of arrest, rules of evidence, legal rights of citizens, and court procedures; State traffic laws and the principles of traffic control and safety.



Ability to: formulate rules and regulations for the operation of the Harbor Police force; analyze police problems, plan, organize, and direct the work of the force, and train the men in the performance of their duties; maintain cooperative relations with those contacted in the work; speak and write effectively and prepare clear and concise reports; analyze situations accurately and take effective action.

and
Special personal characteristics: Willingness to work at any time emergencies may arise; demonstrated administrative ability; tact; firmness; good personal appearance; and normal hearing and normal vision or vision corrected to normal by glasses.

Monthly Compensation: \$717 753 790 829 870

Work Week Group: 4C

Note: Salary information for this class was correct on 12/21/64.
Any subsequent salary changes have not been recorded.



APPENDIX "E"

San Francisco Civil Service Commission Classifications for Policeman, Sergeant and Captain of Police Department

DIVISION Q POLICE SERVICE

This division includes duties involving responsibility for the preservation of law and order, or duties directly related thereto.

Q2 POLICEMAN: Under supervision: in an assigned district is responsible for the maintenance of order, the enforcement of laws and ordinances, and the protection of life and property; patrols an assigned district or beat on foot; patrols assigned areas in radio cars; directs traffic; prepares reports on work done and unusual incidents observed; when necessary makes arrests; handles prisoners in police department custody; issues citations; performs duty in bureau, stations and on other assignments requiring police training and experience; gives advice on laws, ordinances and other matters concerning police administration, and general information to the public; and performs related duties as required.

Q20 WOMAN PROTECTIVE OFFICER: Under supervision: as assigned performs police duty in the prevention and curtailment of juvenile delinquency and the enforcement of laws affecting the welfare of women and children; may be assigned to railway depots, public dances or other places where cases involving women and children may be encountered or anticipated; may be assigned to investigation of complaints; and performs related duties as required.

Q25 INSPECTOR OF MOTOR VEHICLES: Under general supervision: supervises all motor vehicles of the police department; is responsible for operation and upkeep

of all motor vehicles including motorcycles; checks equipment for repairs and service; keeps record of repairs; instructs members concerning safe driving and proper care of vehicles; certifies members qualified to operate police automotive equipment; requisitions and checks delivery of supplies; makes cost and other required reports; when required performs the duties of a police officer; and performs related duties as required.

Q33 RANGE MASTER: Under general supervision: organizes and administers an in-service training program involving instructions in the proper and efficient use of the various types of firearms used by members of the police force, auxiliary force and civilians; has charge of the maintenance of the police pistol range and supervises subordinates and civilians in the operation thereof; organizes and administers competitive matches; maintains necessary records; makes required reports; when required, performs duties of a police officer; and performs related duties as required.

Q30 POLICE PATROL DRIVER: Under general supervision: as a member of the police department operates police patrol wagon; keeps patrol wagon properly equipped and fueled and ready for service at all times; and performs related duties as required.

Q30 SERGEANT: Under general supervision: while on patrol duty has immediate supervision and control of patrolmen and other members under him; keeps record of beats, details and assignments; prepares reports regarding police conditions in his section and other required reports; and performs related duties as required.

Q50 LIEUTENANT: Under direction: during an assigned command of a district and in the absence of the captain is responsible for the preservation of law and order; has control, management and direction of members assigned to his command; is responsible for strict observation and enforcement of the rules of the department and orders issued by competent authority; may be assigned to a bureau or other unit of the department; keeps required records; makes required reports; and performs related duties as required.

Q52 PHOTOGRAPHER, POLICE DEPARTMENT: Under general supervision: photographs prisoners, dead persons, finger-prints, maps, documents and other objects valuable as evidence; develops and prints photographs and files the plates; and performs related duties as required.

Q63 CRIMINOLOGIST: Under general administrative direction: has charge of the identification division, consisting of bureau of identification, photographic and fingerprint sections, and crime laboratory; visits scenes of crime or accident and draws diagrams to scale or takes photographs of scene as evidence; assists in apprehending criminals; directs the photographing of prisoners, dead persons, fingerprints, and other objects valuable as evidence; makes microscopic and chemical tests and applies other scientific techniques to objects of evidence; and performs related duties as required.

Q30 CAPTAIN: Under general direction: is responsible for the preservation of law and order in a designated district; has control, management and direction of members assigned to his command; is responsible for strict observation and enforcement of the rules of the department and orders issued by competent authority; may be assigned to a bureau or other unit of the department; keeps required records; makes required reports; and performs related duties as required.

January 20, 1969

Thomas J. Cahill
Chief of Police
850 Bryant Street
San Francisco, California

Subject: Noncitizens; Prohibition Against
Employment as Police Officers

Dear Chief Cahill:

This is in reply to your letter requesting my opinion concerning the application of recently enacted section 1947 of the Labor Code to section 12021 of the Penal Code. Section 1947 of the Labor Code authorizes public employment of noncitizen residents of California who have indicated their intent to become United States citizens while section 12021 of the Penal Code makes it a felony for any noncitizen to own, possess or have in his custody or control any pistol, revolver or other firearm capable of being concealed upon the person.

On January 9, 1969, I rendered Opinion No. 69-1, a copy of which is attached, that section 1947 of the Labor Code is applicable to the City and County of San Francisco to authorize employment of noncitizens who have indicated their intent to become citizens of the United States.

Section 1947 of the Labor Code does not expressly repeal section 12021 of the Penal Code. It is a general rule that repeals by implication are not favored and that a statute will not be construed as repealing prior acts on the same subject unless there is an irreconcilable conflict between the two statutes (Penziner v. West American Finance Co., 10 Cal.2d 160, 176; Boyd v. Huntington, 215 Cal. 473, 482; Fay v. District Court of Appeal, 200 Cal. 522, 538; Washington Lumber etc. Co. v. McGuire, 213 Cal. 13, 17). In Penziner v. West American Finance Co., supra, the court stated at

Thomas J. Cahill

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January 20, 1969

page 176:

"The presumption is against repeals by implication, especially where the prior act has been generally understood and acted upon. To overcome the presumption the two acts must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. The courts are bound, if possible, to maintain the integrity of both statutes if the two may stand together. Where a modification will suffice, a repeal will not be presumed. [Citing cases.]"

A general statute will not repeal by implication a former statute which is special or which is limited in application unless there is something in the general law that makes it manifest that the Legislature contemplated and intended a repeal. (Boyd v. Huntington, supra; Div. of Labor Law Enforcement v. Moroney, 28 Cal.2d 344, 346.) Where the same subject matter is covered by inconsistent provisions, one of which is special and the other general, the special one is an exception to the general statute and controls unless an intent to the contrary clearly appears. (Warne v. Harkness, 60 Cal.2d 579, 588; In re Williamson, 23 Cal.2d 651, 654.)

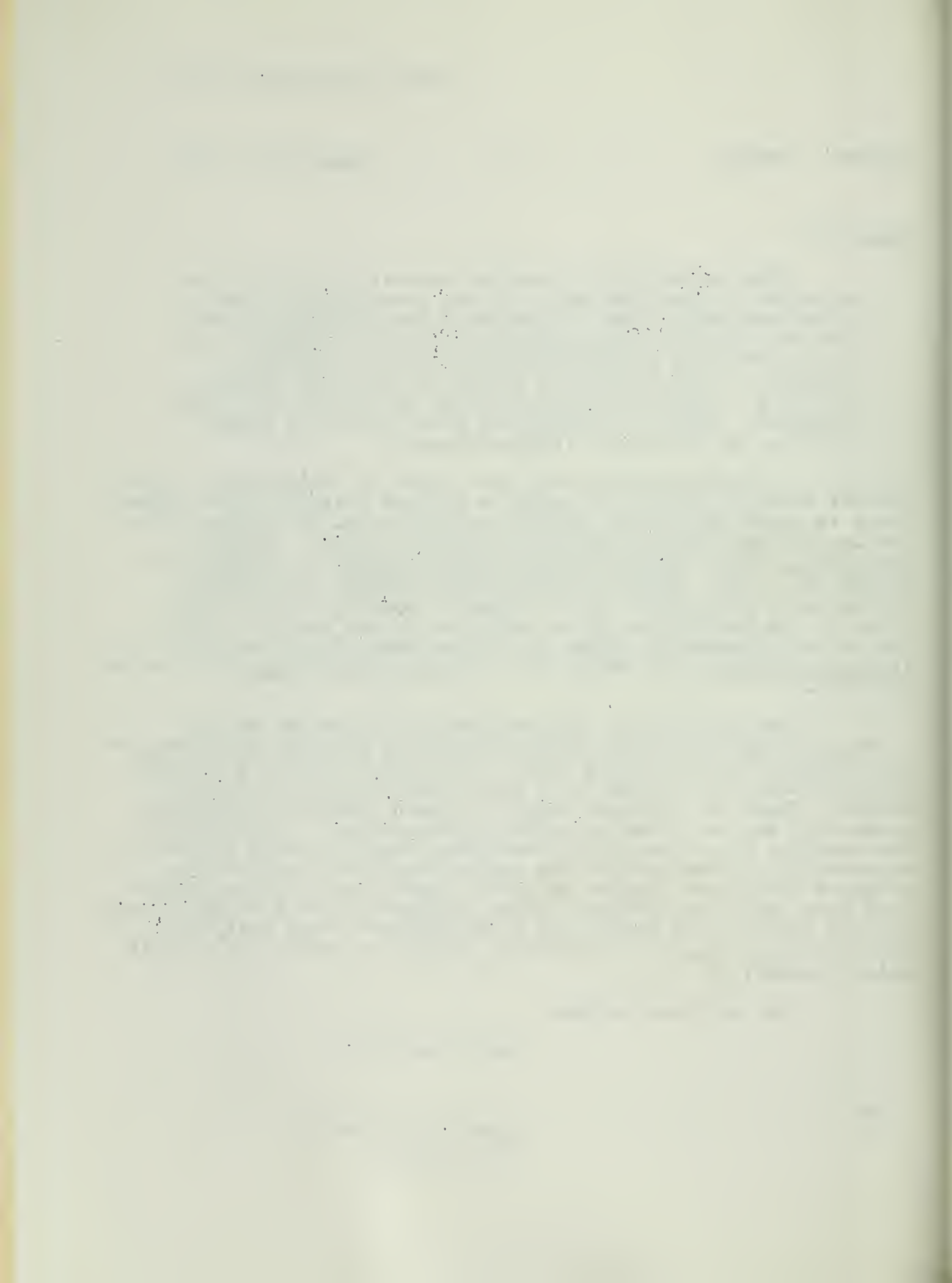
Section 1947 of the Labor Code is a general statute authorizing the employment of noncitizens by the City and County of San Francisco while section 12021 of the Penal Code is a specific statute making it a crime for a noncitizen to carry a concealed weapon. These two statutes should be given concurrent operation since they are not irreconcilable or inconsistent. Accordingly, the specific provision of the Penal Code section should be read as an exception to the general law authorizing employment of noncitizens in City and County service. Therefore, it is my opinion that even though noncitizens may be employed by the City and County, section 12021 of the Penal Code would prohibit their assignment to positions requiring the possession, custody or control of concealable firearms.

You are thus advised.

Very truly yours,

MCK

THOMAS M. O'CONNOR
City Attorney



January 3, 1969

Thomas J. Cahill
Chief of Police
San Francisco Police Department
Hall of Justice
850 Bryant Street
San Francisco, California 94103

Attention of Ken Samuels,
Inspector of Police

Subject: Patrol Wagon Operators -
Driver License Requirements

Dear Chief Cahill:

This refers to your inquiry as to the status of the San Francisco Police Department patrol wagons and the driver's license requirements for the operators of such vehicles.

You have advised that the Department operates eleven patrol wagons, primarily used for the transportation of prisoners. The vehicles have no more than two axles and are designed to carry not more than fifteen passengers, plus an operator and one other police officer.

Your initial question is whether the patrol wagons come within the definition of a "bus" set forth in California Vehicle Code §233. Although the commonly understood definition of a bus is that of a "trackless motor vehicle engaged in the business of carrying passengers for hire . . . over a particular route to a particular point or within designated territory" (60 C.J.S. p. 114), California Vehicle Code §233 defines a bus in much more general language and is controlling:

"A 'bus' is any motor vehicle, other than a motor truck or truck tractor, designed for carrying more than nine persons including the driver and used or maintained for the transportation of passengers."

Clearly, the patrol wagons do not come within either exception mentioned in §233, since "motor trucks" have been defined as motor vehicles designed for the transportation of property

Thomas J. Cahill

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January 3, 1969

(Vehicle Code §410) and "truck tractors" have been defined as motor vehicles designed for drawing other vehicles (Vehicle Code §655).

The sole question arising under this definition of a "bus" is whether the involuntary occupants of the patrol wagons are "passengers." The term "passenger" is not defined in the California Vehicle Code. The case of Sheldon v. City of Burlingame (1956), 146 C.A. 2d 30, concerned a minor being driven home in a police car. Interpreting the guest statute, the court determined that if the minor was being taken home in the proper exercise of the police officer's duties, the minor was a passenger as a matter of law. The more recent case of Rabago v. Meraz (1963), 60 C.2d 55, concerned the plaintiff's use of the word "passenger" in her complaint. The court in attempting to define the term "passenger" stated at p. 59:

"More clarity is found in Webster's Third New International Dictionary (1961) which (in addition to several definitions with which we are not concerned) contains the following: '2 a: a traveler in a public conveyance (as a train, bus, airplane or ship) . . . b: one who is carried in a private conveyance (as an automobile) for compensation or expected benefit to the owner c: a rider in an automobile (a six-passenger model)'. Certainly, from these definitions, an involuntary occupant comes within the general meaning of the term 'passenger.' It thus follows, that when plaintiff alleged (in her second cause of action) that she was a passenger in defendant's automobile, she merely stated that she was an occupant of the vehicle other than the driver. She may have meant that she was a guest, a passenger for hire, or an involuntary occupant."

Based upon the above, it is my opinion that the involuntary occupants of the patrol wagons would be "passengers" as that term is used in Vehicle Code §233. Thus, the patrol wagons would appear to come within the definition of a "bus" as set forth in §233.

You next inquire as to whether patrol wagon operators must carry a Class 2 Driver's license while driving such equipment. California Vehicle Code §12804 (b) provides:

"In accordance with the following classifications any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles he desires a licence to drive . . .

Thomas J. Cahill

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January 3, 1969

"(2) Class 2. Any bus . . ."

Prescinding from our initial determination that patrol wagons are included within the definition of "bus" in §233, it is my opinion that it is mandatory for patrol wagon operators to possess a Class 2 driver's license.

Your final inquiry concerns the issuance of Certificates of Driving Experience by the San Francisco Police Department. You have advised that the Department has been testing applicants for license renewal pursuant to Vehicle Code §12804(c) which provides:

"The department may accept a certificate of driving experience in lieu of a driving test on class 1 or 2 applications when such certificate is issued by an employer of the applicant provided the applicant has first qualified for a class 3 license and also met the other examination requirements for the license for which he is applying. Such certificate may be submitted as evidence of the applicant's experience or training in the operation of the types of equipment covered by the license for which he is applying."

Your letter indicates that the Department of Motor Vehicles has now informed the San Francisco Police Department that it is not authorized to complete such certificates. I have reviewed the letter of the Department of Motor Vehicles denying authorization to the San Francisco Police Department to issue the certificates. The reasons for such refusal are not entirely clear and therefore I would suggest that the San Francisco Police Department initiate a letter to the Department of Motor Vehicles outlining your present procedure and qualifications, and making inquiry as to the specific reasons for such denial of authorization.

Yours very truly,

GEK

THOMAS M. O'CONNOR
City Attorney

January 15, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Expansion of Candlestick Park; Letter
of Intent Filed by San Francisco
Stadium, Inc.; Legal Effect of Qualified
Acceptance by Board of Supervisors

Dear Mr. Dolan:

This is in answer to your letter of January 6, 1969, requesting an opinion on several questions relative to a letter of intent filed by San Francisco Stadium, Inc., a nonprofit corporation, for rehabilitation and/or expansion of Candlestick Park Stadium, and later withdrawal thereof.

The pertinent facts herein are as follows: San Francisco Stadium, Inc., by letter of intent dated April 26, 1967, offered to aid and assist the City and County of San Francisco in financing and constructing additional improvements to and expansion of Candlestick Park. The Board of Supervisors, by Resolution No. 649-67, adopted October 2, 1967, approved the aforesaid offer of San Francisco Stadium, Inc., subject, however, to a number of conditions including the following condition which was not part of the terms proposed in San Francisco Stadium, Inc.'s offer:

"At such time as actual construction commences on the proposed stadium expansion, the functions of a clerk of the work shall be performed by the City. The City, through the Director of Public Works, shall control inspection during the entire period of construction to assure compliance with plans and specifications. The expenses of such inspection by the City shall be borne by San Francisco Stadium, Inc."

Mr. Robert J. Dolan

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January 15, 1969

By letter dated November 6, 1967, San Francisco Stadium, Inc. advised that the resolution adopted by the Board of Supervisors did not conform with its understanding of its commitment to the City and suggested that Resolution No. 649-67 be amended. The resolution was never amended.

Based on the above facts you have requested an opinion on the following questions:

1. Was there actually an offer and acceptance, resulting in a completed contract?

2. If a contract was in effect formed at that time, was it rescinded when the letter of intent was withdrawn?

3. If the contract was not rescinded, can the present situation be regarded as a mere delay in performance which could not be waived by agreement of the parties thereto?

4. Could either side now demand specific performance of the prior contract?

The primary question posed is whether there was actually an offer and acceptance resulting in a completed contract.

Mutual consent is necessary to the existence of any contract (Gold v. Gibbons, 178 Cal. 2d 517, 519). Consent is not mutual unless all the parties agree to the same thing in the same sense (Sec. 1580, Civil Code). In short, there can be no contract unless the minds of the parties have met and mutually agreed. There must be an offer or a proposal and an acceptance of it. Through such offer by one of the parties and acceptance by another a contract between them is created.

It is fundamental that an offer imposes no obligation until it is accepted according to its terms. A qualified acceptance of an offer constitutes a rejection of the original offer and is a new proposal. An acceptance, to result in the formation of a binding contract, must meet exactly and precisely the terms proposed in the offer, and if something different is made a condition to the alleged acceptance there is no meeting of the minds and no contract arises, unless the original offeror accepts the counter offer (Block Co. v. Peterson, 123 C.A. 2d 300, 310).

Based on the foregoing facts and applicable law, it is my opinion that by its terms Board of Supervisors Resolution 649-67 was a qualified acceptance of the offer of San Francisco Stadium, Inc.; that, as such, it constituted a rejection of the original

Mr. Robert J. Dolan

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January 15, 1969

offer and was a counter offer and new proposal; that said counter offer was not accepted by San Francisco Stadium, Inc.; and that in the absence of a meeting of the minds and mutual agreement a binding contract between the parties was not created. In view of this conclusion it is not necessary to discuss the three remaining questions presented.

By letter dated December 26, 1968, the President of the Board, John A. Ertola, requested San Francisco Stadium, Inc. and the Recreation and Park Commission to submit an up-to-date letter of intent for the improvement and expansion of Candlestick Park Stadium. In view of my opinion expressed herein, it would appear that compliance with said request would not only be a proper but a requisite step leading toward the creation of a binding contract between the parties.

Very truly yours,

JC

THOMAS M. O'CONNOR
City Attorney

January 28, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California

Subject: Legality of Election of
Supervisors Pelosi and Tamaras
to Golden Gate Bridge and Highway
District Board of Directors;
Your File 33-68

Dear Mr. Dolan:

This is in response to your letter of January 16, 1969, enclosing a copy of Resolution No. 773-68 relating, in part, to the election of Supervisor Pelosi and Supervisor Tamaras to the Board of Directors of the subject District and requesting assurance that there is nothing of a legal nature in the circumstances relevant to their election which would in any way compromise or adversely affect their positions, either as members of the Bridge Directorate or the Board of Supervisors.

Resolution No. 773-68 was adopted by the Board of Supervisors pursuant to the provisions of Sections 27122 and 27123 of the Streets and Highways Code as added or amended by the State Legislature in 1968. (Statutes of 1968, Chap. 1472, Secs. 2, 3.) Section 27122 was added to the Streets and Highways Code and provides, in part, as follows:

"Sec. 27122. The composition of the board of directors of the district shall be as follows:

" . . . (d) Nine directors, representing the City and County of San Francisco, eight of which shall be appointed by the board of supervisors thereof . . . Four of such directors

Mr. Robert J. Dolan

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January 28, 1969

shall be elected members of said board of supervisors."

Section 27123, as amended, reads as follows:

"Those directors appointed by the board of supervisors of a county shall be appointed by resolution of such board of supervisors, a certified copy of which shall be immediately forwarded to the Secretary of State."

Prior to the action of the State Legislature in 1968 it had been judicially established that the duties of the office of director of a bridge and highway district and that of county supervisor of a county comprising the district are incompatible and that entrance by one holding either office upon the duties of the second office terminated the first office as effectively as a resignation. (People ex rel. Bagshaw v. Thompson, 55 Cal.App.2d 147.)

The Bagshaw decision was based upon the common law rule which, by statute, is the rule of decision in all the courts of the State of California, insofar as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of the State of California (Civil Code, Sec. 22.2).

The mandate contained in Section 27122 of the Streets and Highways Code as added by the Legislature in 1968, that four of the directors of the Golden Gate Bridge and Highway District be elected members of the Board of Supervisors of the City and County of San Francisco is inconsistent with the common law rule holding of the court in the Bagshaw case that these two offices are incompatible and, to that extent, the common law has been superseded by statute. (Civil Code, Sec. 22.2; Fall River Valley Irr. Dist. v. Mt. Shasta Power Corp., 202 Cal. 56; Ex parte Bagwell, 26 Cal.App.2d 418.)

Accordingly, it is my opinion that there is nothing of a legal nature in the circumstances relevant to the election of Supervisor Pelosi and Supervisor Tamaras to the Bridge Directorate which would in any way compromise or adversely affect their position, either as members of said Directorate or as members of the Board of Supervisors.

Very truly yours,

JJS

THOMAS M. O'CONNOR
City Attorney

January 6, 1969

Mr. George A. Grubb
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Salary Rights of Craft Employees Upon
Transfer of the Port

Dear Mr. Grubb:

This is in reply to your letter of January 3, 1969, requesting my opinion as to salary rights of craft employees in the service of the San Francisco Port Authority upon transfer of the Port to the City and County of San Francisco.

California Statutes 1968, Chapter 1333, authorized transfer of property under jurisdiction of the San Francisco Port Authority to the City and County of San Francisco. The electorate approved the Port transfer at the general election in November 1968, and the Charter was accordingly amended to incorporate the provisions of the statute. (Sections 47, 48.2, 48.3, 48.4.)

Section 20 of the statute generally provides that all persons in the employ of the San Francisco Port Authority at the time that the Act takes effect shall continue to hold their positions under the civil service provisions of the Charter of the City and County of San Francisco. It provides that "they shall be entitled to all of the rights, benefits and privileges" which such persons might have enjoyed had they originally been appointed to their positions under certification from the civil service commission of the City and County of San Francisco.

Section 20 of the State legislation further provides:

"The employment rights of such state employees shall be fully protected at the time of the transfer authorized by this act. Salary, employment conditions,

Mr. George A. Grubb

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January 6, 1969

and benefits shall be no less than those received by the employees of the San Francisco Port Authority at the time of transfer. These rights and benefits include, but are not limited to: . . . no less than the same wage and salary range for comparable classes; . . ."

In the recent District Court of Appeal case of Proctor v. San Francisco Port Authority, 266 A.C.A. 740, modified in 267 A.C.A. 234, the court held that under section 1705.5 of the Harbors and Navigation Code, craft employees of the Port Authority were entitled to a basic salary measured by the prevailing rate for comparable service in public employment or private business plus certain salary increment ranges above the basic rate as determined under State law.

Section 20 of Statutes 1968, Chapter 1333, provides that on the effective date of the Port transfer, Port employees shall be entitled to all the rights, benefits and privileges of other City employees as if such Port employees had been originally appointed under certification from the City and County civil service commission. It further provides that the Port employees' salaries shall be no less than received by them at the time of transfer. Therefore, the salaries of the Port craftsmen should be computed pursuant to the decision in the Proctor v. San Francisco Port Authority case and compared with the salary of the same craftsmen in City and County service as determined by section 151.3 of the Charter. If a craft employee of the Port receives less than the salary of his counterpart in City service, then such Port employee would be entitled to receive the same salary as paid the City and County craftsman under section 151.3 of the Charter. If the Port employee's salary under the State formula is greater than the salary of the City and County craftsman, as determined by section 151.3 of the Charter, then such Port employee would be entitled to continue employment in the City and County service at the same salary as received from the State. Such Port employee's salary would continue at that rate until altered by the yearly wage determination as provided in section 151.3 of the Charter.

After the transfer has been effected on February 7, 1969, the transferred employees shall be governed by the civil service provisions of the Charter. Accordingly, the City would not be required to continue payment to the transferred employees of salary increments to which they may have been entitled under State law.

Mr. George A. Grubb

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January 6, 1969

You are thus advised.

Very truly yours,

MCK

THOMAS M. O'CONNOR
City Attorney

January 10, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Legality of Appropriation of Funds
for Hiring Expert to Act as Liaison
Between Mayor's Office and Board of
Supervisors and Schools

Dear Mr. Dolan:

You have asked for my opinion as to whether an appropriation by the Board of Supervisors of a sum of money to contract with an expert to act as liaison between the Mayor's office and the Board of Supervisors and City and State educational institutions in the City and County would constitute a legal expenditure of City and County funds. You base your request upon the following statement: "inasmuch as neither the Mayor's Office nor the Board of Supervisors is empowered to exercise jurisdiction over City or State schools or the educational issues which have precipitated recent disturbances in these institutions." Your request is prompted by the circumstance that education and public schools are under the jurisdiction of state agencies and are not essentially a municipal function. (See Hancock v. Board of Education, 140 Cal. 554, 561; Kennedy v. Miller, 97 Cal. 429, 543.) It is correct that in general education and public schools are governed by state law and are not essentially a municipal function.

Generally, funds of a municipality may be appropriated only for strictly municipal purposes. This rule applies even to an appropriation that is otherwise for a public purpose (see Graham v. Mayor Etc. of Fresno, 151 Cal. 465, 473; City of Sacramento v. Adams, 171 Cal. 458, 461; City of Oakland v. Garrison, 194 Cal. 298, 303) unless there will be some benefit to the municipality and its people resulting from it. (See Perez v.

Mr. Robert J. Dolan

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January 10, 1969

City of San Jose, 107 Cal.App.2d 562.) In this connection the following from Bank v. Bell, 62 Cal.App. 320, 330, is pertinent:

"In defining a 'municipal affair' it has been said that 'the true test is that which requires that the work should be essentially public and for the general good of all the inhabitants of the city. It must not be undertaken merely for gain or for private objects. Gain or loss may incidentally follow, but the purpose must be primarily to satisfy the need, or contribute to the convenience, of the people of the city at large. Within that sphere of action, novelty should impose no veto.'"

In the Mayor's letter to the Board, the request for the appropriation is stated to be for the following purposes:

"It is now quite apparent to all of us that the entire community is involved in educational issues which threaten the peace and stability of the City. A good deal of whatever effective work is done in the ghetto areas can be nullified overnight by educational disputes over which we have no jurisdiction. In terms of State educational institutions, we are being placed in the position of supplying police power to put down disturbances without any control over the educational issues involved. The disturbances which occur on the State College campuses have actually overlapped into our high schools and into City College. There is a serious deficiency in our organizational setup by reason of the lack of effective liaison with the educational institutions, City and State.

"It is highly inefficient and expensive to act on a crisis-to-crisis basis. Groundwork to prevent occurrences is the wiser policy."

There has been injury to persons and damage to property constituting a threat generally to the lives, property and welfare of the inhabitants of the City and County. Further, additional expense has been incurred by the City and County of San Francisco by the request of the authorities in charge of the educational institutions involved for assistance by law enforcement personnel. The prevention and control of these disturbances and the reduction of expenses are, of course, of benefit to the City and County of San Francisco and its citizens.

Mr. Robert J. Dolan

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January 10, 1969

Moreover, the appropriation here under consideration would be in aid of the Mayor and the Board of Supervisors in carrying out their duties. The Mayor is "responsible for the enforcement of all laws relating to the municipality . . . The mayor may make such studies and surveys as he may deem advisable in anticipation of . . . any emergency." (Charter Section 25.)

The Board of Supervisors as the legislative body of the City and County is charged with the responsibility of enacting such laws, as do not conflict with general law, as it deems necessary to protect persons and property.

As it appears that a purpose of the appropriation is for the prevention of disturbances threatening the peace of the City and County, for the protection of persons and property of the citizens of the City and County, it is a municipal one. You are advised, therefore, that the Board of Supervisors may legally appropriate the sum of money recommended by the Mayor.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

EAB

February 6, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Vacated Street Area; Power of Board of
Supervisors to Reduce Cost of Land
Below Director of Property Appraisal

Dear Mr. Dolan:

This is in response to your request for an opinion as to the power of the Board of Supervisors to reduce the cost of vacating street area below the appraisal submitted by the Director of Property and, if so, under what conditions.

Section 107 of the Charter of San Francisco provides in part as follows:

"Where a procedure for the exercising of any rights and powers belonging to a city, or a county, or a city and county, relative to . . . vacating, paving, repaving or otherwise improving streets and highways . . ., is provided by statute of the State of California, such procedure shall control and be followed, unless a different procedure is provided in or under authority of this charter or by ordinance continued by this charter or any such ordinance hereafter amended or by ordinance passed by the board of supervisors, . . ."

The Board of Supervisors has not adopted a street vacation ordinance and therefore any proposed street vacation is accomplished under the provisions of the Streets and Highways Code beginning with Section 8300 thereof.

Section 8322 provides that before the vacation of any street or part thereof, the Board of Supervisors shall adopt a resolution declaring its intention to do so and the resolution shall further fix a time and place for hearing all persons interested in, or objecting to the proposed vacation. Section 8323 of the Streets and Highways Code provides as follows:

Mr. Robert J. Dolan

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February 6, 1959

"The city council shall, on the day fixed for the hearing, or on the day to which the hearing is postponed or continued, hear the evidence offered by any person interested. If the city council finds, from all the evidence submitted, that any street or part thereof, described in the ordinance or resolution of intention, is unnecessary for present or prospective public street purposes, the city council may make its order vacating such street or part thereof."

When the Board of Supervisors hears a matter of street vacation it must do so as a committee of the whole because the law provides that the appropriate legislative body shall hear the evidence offered as to why the street should be vacated. If the street area requested for vacation is owned in fee by the City and County of San Francisco, testimony as to the appraised value of the streets should be received so that a proper determination can be made as to the cost of sale of the underlying fee. This is required because the City and County of San Francisco is prohibited from making a gift of public property. (Perez v. City of San Jose (1951), 107 Cal. App. 2d 562, 566.)

In the case of Stamps v. Board of Supervisors, 233 Cal. App. 2d 256, 259, the court held that the Board of Supervisors of San Francisco while sitting as a Board of Equalization could not make a finding that a leasehold was without value where no evidence was before the Board to warrant reduction of the assessment. When the Board was sitting as a Board of Equalization, it was sitting as a committee of the whole and was operating pursuant to State law. By analogy, without competent evidence being submitted to the Board as to an opposing view as to the value of a vacated street area, the Board would have no authority to reduce the appraisal determined by the Director of Property.

All appropriation or expenditures of public money by municipalities and indebtedness created by them, must be for a public and municipal corporate purpose as distinguished from a private purpose under the powers of the particular municipality. (See 35 Cal. Jur. 2, page 112.) The courts of California in reviewing the propriety of expenditures as a municipal affair and purpose have defined it in the following fashion in the case of Bank v. Bell, 62 Cal. App. 320, 330:

"In defining a 'municipal affair' it has been said that 'the true test is that which requires that the work should be essentially public and for the general good of all the inhabitants of the city. It must not be undertaken merely for gain or for private objects. Gain or loss may incidentally follow, but the purpose must be primarily to satisfy the need, or contribute to the convenience, of the people of the city at large. Within that sphere of action, novelty should impose no veto.'"

Mr. Robert J. Dolan

3

February 6, 1939

The paramount test of public purpose is whether the expenditure or grant in aid confers a direct public benefit of reasonably general character to a significant part of the public at large.

Under the factual situation that is before the Board of Supervisors there is a request on behalf of two hospitals operating within the City but not under the management or control of the City, to reduce the appraised value of street area proposed to be vacated on the basis of the charitable nature of the hospital operation. However, laudable these activities might be, the requested grant in aid to reduce the value of the vacated street area would not benefit a sufficient number of the citizens of the City and County of San Francisco to make this a municipal public purpose. As stated by the Attorney General of the State of California in Volume 34, Ops. Atty. Gen., page 167:

"The argument that hospital purposes, within the meaning of Article XIII, section 1c, of the Constitution and section 214 of the Revenue and Taxation Code are the equivalent of a proper public purpose under Article IV, section 31, of the Constitution, was considered and rejected in Doctors Hospital v. County of Santa Clara, supra (see, also, 23 Ops. Cal. Atty. Gen. 135.) Kaufman, P. J., pointed out in the Doctors Hospital case that since hospitals are not compelled to engage in such hospital purposes as would also be proper public purposes, a gift to a hospital, in the form of a cancellation of county taxes which were a lien on the hospital property, cannot be sustained by the application of the public purpose exception to Article IV, section 31, of the Constitution." (See, also, 7 Ops. Atty. Gen. 172, 173.)

Also involved here are the provisions of Section 24 of Article 13 of the State Constitution prohibiting a city and county from granting or donating real estate, personal property or anything in aid of or for any religious creed, church or sectarian purpose whatever or from helping to support or sustain any hospital controlled by any religious creed, church or sectarian denomination whatever. However, in view of what has heretofore been stated I find it unnecessary to determine whether an arbitrary reduction in the price of the vacated street area would be in violation of these constitutional provisions.

In summary, you are advised that the Board of Supervisors cannot reduce the appraised value of vacated street area without competent evidence of value being supplied to it so that it may make a judgment as to whether the appraised value submitted by the

Mr. Robert J. Dolan

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February 6, 1939

Director of Property is valid. In the absence of such evidence, the appraisal of the Director of Property must be accepted.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

RAK

February 13, 1969

Retirement Board
San Francisco City and County
Employees' Retirement System
450 McAllister Street
San Francisco, California 94102

Attention: Mr. Daniel Mattrocce, Secretary
and General Manager

Subject: Status of Elected Member of Retirement
Board While Absent on Military Leave

Gentlemen:

You have requested my advice regarding the status of Mr. Philip J. Kearney, an elected member of the Retirement Board, during the period of his current absence on military leave.

It is my understanding that Mr. Kearney is now on active military duty with the U. S. Department of the Army. In connection therewith, he has been allowed military leave from his position as an employee in the Real Estate Department. This leave commenced on January 27, 1969, and is to extend for a period of 153 days. During his period of duty he will be assigned to the Presidio of San Francisco. His military superiors have consented to his continuing to serve as a member of the Retirement Board, and have granted to him the privilege of absenting himself from military duty on Wednesday afternoons so that he may attend and participate in the regular meetings of the Retirement Board.

By virtue of the provisions of Section 153 of the Charter, military service constitutes a sufficient ground for a leave of absence to Mr. Kearney.

The legal issue presented is this: Is it permissible for Mr. Kearney to continue to serve as a member of the Retirement Board during the described period of his military leave.

Retirement Board

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February 13, 1969

As a member of the Retirement Board, Mr. Kearney is an officer of the City and County of San Francisco (Charter §§4 and 159). The office thus occupied by Mr. Kearney is not one of profit; and this by reason of the recitation in Charter Section 159 that members of the Retirement Board serve thereon without compensation.

Fundamental to the issue presented herein is the principle and policy that the right to hold public office is a valuable right of citizenship. It is said that the exercise of this right should not be prohibited or curtailed except by plain provision of law. Ambiguities in the law must be resolved in favor of eligibility to public office. Carter v. Commission on Qualifications, 14 Cal. 2d 182.

Under certain circumstances, the law prohibits the simultaneous occupation of two public offices. The dual occupation of public office is sometimes proscribed by constitution or statute, and at other times under principles of common law. In either context, the prohibitions against such duality in office are usually based upon an element of incompatibility. Where the functions and duties of separate public offices are inherently inconsistent or repugnant, or where antagonism would result in any attempt by one person to discharge the duties of both offices, the law forbids dual occupation. (40 Cal. Juris.(2) 667-674)

Basically, the common law prohibition is premised upon that concept of conflict or repugnancy. The statutory prohibition is most frequently based upon the same concept, but need not necessarily be.

In the Kearney situation, I see no common law conflict. It would appear certain that under no ascertainable circumstance might it be conceived that the content of duties performed by Mr. Kearney for the United States Army would conflict with any matter presented to the Retirement Board under its local functions and responsibilities.

Charter Section 142, in the last paragraph, contains a statutory prohibition against dual occupation of public office, but the language thereof creates a proscription only as to "Any person holding a salaried office under the City and County . . ." As indicated above, and although Mr. Kearney is an officer of the City and County, his office is not "salaried." Hence, Charter Section 142 does not forbid the duality under consideration.

Section 20 of Article IV of the California Constitution provides that:

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"No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State . . ."

In my opinion, this constitutional prohibition against duality does not apply to the Kearney situation by reason of the fact that membership on the local Retirement Board does not constitute a "civil office of profit . . ." even were we to assume that such membership on our purely local and municipal board was the occupation of an office "under this State . . ."

In reaching this conclusion, I deem it necessary to distinguish our instant case from two California Supreme Court decisions during the World War II period, and Opinion No. 3444 (12/9/42) of my predecessor, John J. O'Toole. The first of such cases is McCoy v. Board of Supervisors, 18 Cal. 2d 193, and the second is People ex. rel. Happell v. Sischo, 23 Cal. 2d 478.

Each case involved the application of the above-noted Section 20 of Article IV of the California Constitution to the entry into military service of a public officer. In the McCoy case, the officer involved was the Chief Engineer of Building and Safety of Los Angeles County. He became a commissioned officer in the United States Marine Corps. The Sischo case involved a Superior Court Judge of Merced County who became a commissioned officer in the United States Army Air Corps. Also pertinent to our present consideration is the element, pointed out in the noted cases, that commissioned officer status was deemed to involve a "lucrative office under the United States." It is also clear from each case that the "office . . . under this State" was an office "of profit."

In the McCoy case, which holding was later followed by the same court in the Sischo decision, it was determined that public policy favored the military service of the concerned officer; and the court refused to hold that Section 20 of Article IV of the Constitution could result in a termination of the local office holder's rights because of his acceptance of an office under the United States. In order to preserve the incumbency of the local officer, the court held that the person's rights to the office were "suspended" while he was rendering temporary service to the United States under a military commission.

It seems evident to me that such determination is necessary only if the constitutional provision, on the facts of a given case, appears applicable. In both McCoy and Sischo the court was dealing

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with a "lucrative office under the United States" as well as with a "civil office of profit under this State." In the Kearney situation, it is not necessary that a "suspension" be determined in order to insure against loss of local office because of temporary entry into the military service of the United States. Since the Section 20 of Article IV conflict is not present in a situation such as Kearney's, I do not believe that the Supreme Court would herein follow the reasoning adopted in McCoy and Sischo upon the "suspension" conclusion.

Regarding City Attorney Opinion 3444, I express the same view. Mr. O'Toole was therein considering a member of the Board of Supervisors of the City and County who was entering into service as a commissioned officer in the United States Navy. That opinion adopted all of the reasoning of the McCoy case because the occupancy of the salaried office of supervisor was clearly a "civil office of profit" within the accepted meaning of Section 20 of Article IV of the State Constitution.

As pointed out above regarding McCoy and Sischo, it seems clear that the conclusion reached by my predecessor must now be distinguished upon the basis that Mr. Kearney's local office is held without compensation.

For all of the reasons set forth above, it is my opinion that Mr. Kearney may continue to serve upon the Retirement Board during the period of his military leave.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

WFB

January 20, 1969

Mr. Joseph E. Tinney
Assessor
101 City Hall
San Francisco, California 94102

Re: Assessment Appeals Board No. 1398/1968
Orpheum Building Company

Dear Mr. Tinney:

This refers to your letter of December 31, 1968, relating to the claim for refund of taxes for the 1967-68 tax year by the Orpheum Building Company. Your letter includes a copy of a letter dated December 26, 1968 to the Assessment Appeals Board from the attorney for the taxpayer to the effect that an assessment appeals board has jurisdictional authority to grant a refund of taxes paid for the 1967-68 year because of the claimed failure of the taxpayer to receive notice of the amount of assessment pursuant to Section 619 of the Revenue and Taxation Code.

The applicant taxpayer contends that the Assessment Appeals Board has authority to grant a refund based upon the following reason: Section 1603 of the Revenue and Taxation Code provides in part:

"Any taxpayer may petition said Board for a reduction in an assessment and a proportionate reduction or refund of the taxes extended thereon by filing an application pursuant to Section 1607 or 5097." (Emphasis added.)

Section 1607 of the Revenue and Taxation Code deals with reductions in assessments by the local board and the content of applications therefor. Section 5097 of the Revenue and Taxation Code provides in part:

"No order for a refund under this article shall be made except on a claim (a) verified by the person who paid the tax . . . (b) filed within 3 years after making payment . . . An application for a reduction in an assessment filed pursuant to Section 1607 shall also constitute a sufficient claim for refund under

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this section if the applicant states in the application that the application is intended to constitute a claim for refund. If the applicant does not so state, he may thereafter and within the period provided in subdivision (b) file a separate claim for refund of taxes extended on the assessment which applicant applied to have reduced pursuant to Section 1607"

It should be noted that the article referred to in Section 5097 (supra) is Article 1 of Chapter 5 of Part 9 of Division 1 of the Revenue and Taxation Code entitled "Refunds Generally." Said article commences with Section 5096 which provides in part:

"On order of the board of supervisors any taxes paid before or after delinquency shall be refunded if they were: . . . (b) erroneously or illegally collected."

It is the applicant's contention that the reference in Section 1603 to Section 5097 confers upon the Assessment Appeals Board the same power to make refunds for erroneously or illegally collected taxes conferred by Section 5096(b) on the Board of Supervisors. I do not concur in this contention.

Erroneously or illegally collected taxes paid before or after delinquency can be refunded only upon an order of the Board of Supervisors in accordance with the provisions of Section 5096 of the Revenue and Taxation Code. The authority of the Assessment Appeals Board is contained in Article 1 of Chapter 1 of Part 3 of Division 1, commencing with Section 1601 of the Revenue and Taxation Code. It makes no provision authorizing assessment appeals boards to order refunds of erroneously or illegally collected taxes. The reference to Section 5097 in Section 1603 specifically applies to refunds due to reductions in assessments. Section 5097 merely provides that an application for reduction of assessment shall constitute a claim for refund if the intention that it does so appears on the face of the application. It does not confer authority upon an assessment appeals board to order a refund of erroneously or illegally collected taxes such as Section 5096 confers upon a board of supervisors. If the Legislature intended to confer such authority on an assessment appeals board it could easily have done so by amending Section 5096 to specifically apply to assessment appeals boards.

The mutual references in the above referred to Revenue and Taxation Code sections indicates that the Legislature merely desired to obviate the necessity of the filing of a separate claim for refund before the Board of Supervisors when the refund is pursuant to a reduction in assessment on the local role and not to

Mr. Joseph E. Tinney

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confer jurisdiction upon the board to determine whether taxes have been erroneously or illegally collected.

Applicant's claim that it is entitled to a refund is based upon the contention that it did not receive notice of assessment for the 1967-68 tax year. The attorney's letter states: "No competent evidence was submitted to rebut taxpayer's testimony on December 4th that such notice was not received." On the other hand your letter states: "The assessment notice was mailed to the same address that all correspondence has been directed for many years."

The applicant quotes a portion of Section 619 of the Revenue and Taxation Code which, quoted in its entirety, provides as follows:

"The assessor shall, upon or prior to completion of the local roll, either:

"(a) Inform each assessee of real property on the local secured roll whose property's full cash value has increased of the assessed value of that property as it shall appear on the completed local roll; or

"(b) Inform each assessee of real property on the local secured roll, or each assessee on the local secured roll and each assessee on the unsecured roll, of the assessed value of his real property or of both his real and his personal property as it shall appear on the completed local roll.

"The information given by the assessor to the assessee pursuant to subdivisions (a) or (b) shall include a notification of hearings by the county board of equalization, which shall include the period during which assessment protests will be accepted and the place where they may be filed.

"This information shall also include the assessment ratio for the county as provided in Section 401 and the full cash value of the property.

"This information shall be furnished by the assessor to the assessee by regular United States mail directed to him at his latest address known to the assessor."

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"The failure of the assessee to receive this information shall not in any way affect the validity of any assessment or the validity of any taxes levied pursuant thereto." (Emphasis added.)

That portion of Section 619 which I have underscored, omitted from the December 26, 1968 letter addressed to the Assessment Appeals Board, sets forth the language of the provision of the law which is determinative of this matter. The attorney for applicant in the same letter cited Caumer v. Tehama County, 247 Cal. App. 2d 548 (1966); and Tamco Development Company, et al. v. County of Del Norte, 260 ACA 979 (1968) and correctly stated that these cases hold in accordance with the last paragraph of Section 619 (supra) that it is the failure of the assessor to mail notice that affects the validity of the assessment and taxes levied pursuant thereto. The failure of the assessee, however, to receive the notice specifically does not in any way affect the assessment or the taxes levied pursuant thereto.

Accordingly, assuming the statement in your letter is correct factually, it is my conclusion that since the notice required by Section 619 was mailed in accordance with the provisions of said section, the failure of the assessee to receive the same neither affects the assessment or the taxes levied pursuant thereto and that further, the Assessment Appeals Board is without authority to order a refund in accordance with the provisions of Section 5093(b) and that if applicant can prove that no notice was mailed as required by Section 619 (supra), its recourse is to have the matter set before the Board of Supervisors for determination.

A copy of this letter is being sent to the Assessment Appeals Board and to the attorney for the applicant.

Very truly yours,

WRL

THOMAS M. O'CONNOR
City Attorney

January 24, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Delinquency Prevention Commission;
Authority and Status of Members Thereof

Dear Mr. Dolan:

This is in response to your letter of January 17, 1969, in which you advise that the members of the subject Commission have raised a number of questions with respect to said Commission's operations.

Specifically, the members of the Commission have inquired as to which agency of local government should arrange for appropriate swearing-in ceremonies and how appropriate indicia of authority may be issued to the members.

The enabling legislation empowering the Board of Supervisors to establish a delinquency prevention commission is to be found in Section 535.5 of the Welfare and Institutions Code, which is part of the Arnold-Kennick Juvenile Court Law. (Welfare & Institutions Code, §§ 500-914.) Hence, it is part and parcel of the Juvenile Court and, in my opinion, the Juvenile Court would be the proper agency of local government to arrange for the appropriate swearing-in ceremony and the issuance of appropriate indicia of authority to the members of the Commission.

The oath of office, required by the State Constitution and as set forth therein (Cal. Const. Art. XX, §3), may be taken before any officer authorized to administer oaths. (Gov. Code §1362) Included among the officers authorized to administer oaths are: judges, justices, notaries public (Code of Civ. Proc., §2093), every executive and judicial officer (Gov. Code §1225), every county officer and his deputies (Gov. Code §24057), the mayor of a city (Gov. Code § 40603) and the jury commissioner (Code of Civ. Proc., §204c).

Very truly yours,

JJS

THOMAS M. O'CONNOR
City Attorney

January 28, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Re: Objections of the Cultural Activities
Committee and Board of Supervisors to
the Grand Fountain Sculpture for Phase
I-A of Ferry Park

Dear Mr. Dolan:

Your letter dated January 23 respecting what the Cultural Activities Committee or the Board of Supervisors may do if they so desire in voicing their objections to the Grand Fountain Sculpture to be constructed in Phase I-A of Ferry Park has been received.

Ordinance No. 260-66, finally passed by the Board of Supervisors on October 17, 1966, approved a Joint Working Agreement dated December 7, 1966, between the City and County of San Francisco and the Redevelopment Agency wherein the Agency agreed to assume responsibility for the development and construction of Phase I-A of Ferry Park.

The agreement provides, inter alia:

"The Agency agrees to furnish copies of all preliminary and final plans and specifications, and copies of all contracts in connection with the design, landscaping, art work and construction of such park to the Director of Public Works and the Recreation and Park Commission for review, and obtain the approval of such director and commission prior to entering into any such contract.

"No work of art or structure shall be contracted for or placed or erected on any of the

Mr. Robert J. Dolan

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property herein involved unless a design or model of the same, as required by the Art Commission, together with the proposed location of such work of art or structure, shall first have been submitted to, and approved by the Art Commission."

The Recreation and Park Commission by Resolutions Nos. 5835, dated September 8, 1966, and 7755, dated November 27, 1968, approved the final plans and specifications for Phase I-A of Ferry Park and by Resolution No. 7762, dated December 4, 1968, approved the final plans and specifications for the Grand Fountain Sculpture to be constructed in such park.

The Director of Public Works, by letters dated September 29, 1966, May 26, 1967, and August 25, 1967, as amended by letter dated March 15, 1968, approved the final plans, specifications and model for Ferry Park Phase I-A and the Grand Fountain Sculpture to be constructed thereon.

The Art Commission, by Resolution dated January 6, 1969 (the number not yet designated), reaffirmed its approval of the Grand Fountain Sculpture design for the Ferry Park plan as embodied in Resolution No. 9069, dated May 1, 1967.

The Chief of the Engineering Division for the Redevelopment Agency has advised that the final contract for the construction of the fountain will be submitted for approval to the Recreation and Park Commission and the Director of Public Works within the next 45 days after which the contract will be executed by the Redevelopment Agency and the builders.

In view of the above working agreement wherein the City and County of San Francisco has agreed with the Redevelopment Agency that the Agency would assume the responsibility for the construction of Phase I-A of Ferry Park and the art work thereon subject to the approval of the Director of Public Works, the Recreation and Park Commission and the Art Commission inter alia, and such approval has been obtained for all work to date, it is my opinion that the Cultural Activities Committee or the Board of Supervisors may not interfere with or seek to prevent the consummation of this work. While the final contract for the construction of the Grand Fountain Sculpture has yet to be approved by the Recreation and Park Commission and the Director of Public Works, these departments heretofore have approved all final plans and specifications of the Grand Fountain Sculpture.

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Paragraph 4 of the working agreement limits the land acquisition costs to \$752,500.00 and park construction costs, including landscaping and art work to \$547,500.00, with the provision that any surplus remaining in the land acquisition allocation may be transferred to the park construction allocation on recommendation of the City's Director of Public Works, Chief Administrative Officer, Controller and the Recreation and Park Commission. In the event that the art work should exceed such allocation then, of course, the City could refuse to appropriate any further funds.

Very truly yours,

RJH

THOMAS M. O'CONNOR
City Attorney



February 13, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Authority of Board of Supervisors
or a Committee Thereof to Hold
Hearings Re Disposition of
Unallocated Utility Funds

Dear Mr. Dolan:

This is in response to your inquiry reading as follows:

"At our Board meeting last Monday, Supervisor William C. Blake called the attention of his colleagues to press reports concerning plans to reallocate revenues within our public utilities structure. Specifically, it has been reported that the General Manager of Public Utilities has offered the Mayor a plan to shift \$500,000 annually of the Municipal Railway deficit to Hetch Hetchy Water Supply by transferring Municipal Railway electrical operations and related staff to the latter utility.

"In connection therewith, Supervisor Blake has tentatively suggested that hearings be held by our Finance Committee for the purpose of considering a policy for disposition of unallocated funds in the accounts of the various public utilities, with appropriate observance of Charter limitations. Supervisor Blake has indicated that the hearings should be directed, in part at least, to the determination of ways and means whereby the Board of Supervisors might be vested with final authority over disposition of utility surpluses, even though such vesting might require approval by the people in the form of a Charter amendment which, among other things, might set up a separate commission and department for the water,

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transport and airport divisions under the present Public Utilities Commission.

"Supervisor Dorothy von Beroldingen has expressed some reservation concerning the Finance Committee's power to undertake the investigation suggested by Supervisor Blake, particularly in view of the provisions of Charter Section 22. Supervisor von Beroldingen respectfully asks that you favor the Board with your opinion as to how it may proceed, if at all, to pursue Supervisor Blake's suggestion in the event that it is formalized and referred to an appropriate committee or committees for action."

Section 22 of the Charter prohibits any interference by the Board of Supervisors, its committees or its members in the administrative functions for which the Chief Administrative Officer or his department heads or any board or commission is responsible, provided, however, that said prohibition in nowise restricts the power of hearing and inquiry vested in the Board of Supervisors by Section 21 of said Charter.

Section 21 of the Charter, in part, empowers the Board of Supervisors to "inquire into matters affecting the conduct of any department or office of the city and county, and for that purpose [it] may hold hearings, subpoena witnesses, administer oaths and compel the production of books, papers, testimony and other evidence . . ."

The power of inquiry conferred by Section 21 upon a legislative body such as the Board of Supervisors is limited to the extent that the purpose thereof must have a legitimate and reasonable relationship to the legislative function exercised by said body. (McGrain v. Daugherty, 273 U.S. 135; 47 S.Ct. 319; 71 L.Ed. 580; 50 A.L.R. 1; see also City Attorney's Opinion No. 1235, dated March 3, 1958.)

In your letter you indicate that the purpose of such hearings would be directed, in part at least, to the determination of ways and means whereby the Board of Supervisors might be vested with final authority over disposition of utility surpluses, even though such vesting might require approval by the people in the form of a Charter amendment.

At the present time, the Charter vests the powers of the city and county in the Board of Supervisors, except as reserved to the people or delegated to other officials, boards of commissions by said Charter (Charter Section 9). The Charter creates a

Mr. Robert J. Dolan

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public utilities commission (Section 120) and delegates to said commission full charge of construction, management, supervision, maintenance, extension, operation and control of all public utilities of the city and county (Section 121). Specific procedures to be followed in dealing with utility receipts and disbursements including surplus funds are set forth therein (Section 127) as well as a procedure for transferring utility surpluses to the general fund provided certain specified conditions are found to exist (Section 129). In addition, the conditions under which, and the procedures for, transferring funds from one utility to another are set forth in Sections 77 and 81 of the Charter. (See also City Attorney's Letter Opinion No. 67-63-A, dated September 11, 1967.)

However, the Board of Supervisors is empowered, on its own motion, to submit to the electorate proposals for amendment of the Charter (Cal. Const., Art. XI, Sec. 8(h)). In the exercise of this power and in order to assure the preparation and presentation of wise, well-informed and needful proposals, the necessity of investigation of some sort must exist as an indispensable incident and auxiliary thereto (In re Battelle, 207 Cal. 227).

Accordingly, it is my opinion that the Board of Supervisors has authority to hold hearings for the purpose of considering the need for the form of a possible Charter amendment with respect to the method of dealing with unallocated funds in the accounts of the various public utilities and, as pointed out in City Attorney Opinion No. 1235, supra, such hearings may properly be conducted by the Finance Committee of the Board.

Very truly yours,

JJS

THOMAS M. O'CONNOR
City Attorney

February 17, 1969

Mr. Elmo E. Ferrari, President
Police Commission
Hall of Justice
850 Bryant Street
San Francisco, California 94103

Subject: Lump Sum Payment of Accumulated
Unused Sick Leave to Police
Officer Upon Retirement or Death

Dear Mr. Ferrari:

You have requested my opinion as to the validity of a proposal that your Commission adopt the following rule as an addition to the Rules and Procedures of the San Francisco Police Department:

"Rule 5.41.1

"Sick leave remaining to the credit of a member upon the effective date of his retirement for service or disability or upon the date of his death shall be disposed of as follows:

"Upon Retirement - The member shall be paid in full for the unused period of accumulated sick leave provided that such payment shall be limited to a maximum of six (6) months sick leave.

"Upon Death - The estate of such member shall be paid in full for the unused period of accumulated sick leave provided that such payment shall be limited to a maximum period of six (6) months sick leave.

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"The enactment of this rule is not intended to constitute additional compensation nor be a part of the rate of pay of such member but is reimbursement for accumulated sick leave to the credit of the member and to which he would have been entitled if he had not retired or died."

Any proposal that a police officer of the City and County be paid for his accumulated unused sick leave upon retirement or that, in the event of his death prior to retirement, the amount be paid to his estate, calls for consideration of the provisions of Charter Section 150.

Section 150 of the Charter provides, in part, that: "The salary, wage or other compensation fixed for each officer and employee in, or as provided by this charter, shall be in full compensation for all services rendered. . . ."

The compensation of police officers is fixed by Section 35.5.1 of the Charter which, in part, provides for a basic amount of wages not in excess of the highest basic amount of wages paid police officers or patrolmen in regular service in the cities included in the certified list of the Civil Service Commission, i.e., cities of 100,000 population or over in the State of California, based upon the latest federal decennial census. In addition to fixing the basic amount of wages for police officers, Section 35.5.1 further provides that: "Working benefits and premium pay differentials of any type, shall be allowed or paid to members of the police department referred to herein only as is otherwise provided in this charter."

Thus, the wage, salary or compensation fixed for police officers in the Charter and which, by virtue of the language of Section 150 of said Charter quoted hereinabove becomes the full compensation for all services rendered, is a basic amount of wages not in excess of the highest basic amount of wages paid regular police officers or patrolmen in California cities of 100,000 population or over plus such other working benefits and premium pay differentials as is otherwise provided for in the Charter.

Among the working benefits provided in the Charter is a leave of absence due to illness or disability. (Charter §153.) The Civil Service Commission is empowered to provide by rule for such sick leave which may be cumulative if not used as authorized, provided that the accumulated unused period of sick leave shall not exceed six months and subject to the further limitation that

Mr. Elmo E. Ferrari, President -3-

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any amendment proposed by the Civil Service Commission to the rule governing sick leave shall be subject to approval of the Board of Supervisors.

Pursuant to Section 153 of the Charter, the Civil Service Commission has adopted a rule governing sick leave (Rule 32, Civil Service Commission). Section 9 of Rule 32 provides that sick leave granted to members of the uniformed forces of the Police and Fire Departments shall be regulated by rules adopted respectively by the Police Commission and the Fire Commission, which rules and amendments thereof, shall be subject to the approval of the Civil Service Commission.

Accordingly, in the light of the foregoing, it is my opinion that the Police Commission is empowered to adopt a rule such as you propose subject, however, to approval by the Civil Service Commission and the Board of Supervisors and upon said adoption and approval the provision of said rule would become a "working benefit" allowed by the Charter and, hence, not in conflict with the provisions of Section 150 of the Charter quoted hereinabove.

Very truly yours,

JJS

THOMAS M. O'CONNOR
City Attorney

February 19, 1969

Mr. James K. Carr
General Manager of Public Utilities
287 City Hall
San Francisco, California 94102

Subject: Municipal Railway Electrical
Personnel and Properties;
Transfer to Hetch Hetchy Project

Dear Mr. Carr:

By letter dated January 23 you have asked for advice upon the legal implications of a proposal suggested by Mayor Alioto whereby the electrical personnel and properties now under the jurisdiction and control of the Municipal Railway would be transferred to the jurisdiction and control of the Hetch Hetchy Project. Thereafter, the Municipal Railway would no longer maintain its own power facilities and have its own personnel in power service, but all of the same would be controlled by Hetch Hetchy. Electrical power needed to operate the railway would be purchased "at the trolley" from Hetch Hetchy.

As I understand the proposal, its effectuation would not result in any change in manpower or facility (property) service now available to the railway utility, nor would it result in any change in the nature, quantity or quality of the transportation service now available to the riding public. As envisioned in the proposal, and confirmed by your own analysis, such transfer of electrical personnel and electrical properties from the transportation utility to the power utility could result in financial and technical economies of substantial benefit to the utilities structure and to the public.

The legal problems are framed in several items of correspondence: (1) your letter to me of January 23, with which you have forwarded (2) your letter to Mayor Alioto of the same date and (3) Mayor Alioto's letter of January 15 to you. When read together,

Mr. James K. Carr

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that correspondence creates the following issues for my consideration:

- (1) Is it legally permissible to transfer utilities personnel from the service of one utility into the service of another utility; and, if permissible, what official action is required?
- (2) Is it legally permissible to transfer property from the jurisdiction and use of one utility into the jurisdiction and use of another utility; and, if permissible, what official action is required?
- (3) Whether, in the event of such transfer, a "discount price" could be established for sales of power from Hetch Hetchy to the Municipal Railway.

Regarding the first issue, you are advised that, by official action of the Public Utilities Commission, personnel now performing services for one utility within a certain civil service class may be assigned to perform services within the same civil service class for another utility. This conclusion is applicable to Municipal Railway personnel in electrical service classes whom the Public Utilities Commission might want to transfer for the performance of identical service with the Hetch Hetchy Project.

In my opinion, the affirmation of such authority in the Public Utilities Commission is fully supported by the provisions of Charter Sections 121 and 20. Specifically, Section 121 gives to the Commission "charge of the . . . management, supervision . . . operation and control of all public utilities" (Emphasis added) Of course, and by definition contained in Charter Section 122, the Municipal Railway and the Hetch Hetchy Project are public utilities. The "management" power of the Commission is broad, and would embrace the action being considered.

In addition, Section 20 (in the last paragraph) grants to the Public Utilities Commission power to combine, transfer and redistribute, among utility departments under its authority, the several functions and duties heretofore assigned to some particular utility.

Hence, it seems clear that a present function of the railway utility, i.e., the operation of the power system supplying

Mr. James K. Carr

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electrical energy for running the railway, may be transferred by the will and action of the Commission to the power utility.

Accordingly, you are advised that, for the purposes now being considered, Municipal Railway electrical power personnel may be transferred to the Hetch Hetchy Project for service in the same civil service class or classes that designate their existing service in the railway.

It must be noted, however, that as part of the personnel transfer it would be necessary to amend the Annual Salary Ordinance so as to reflect the proper enumeration of existing positions, by class, redistributed from the railway utility to the power utility. This is in keeping with requirements contained in Charter Section 73.

Regarding the second issue, I have been informed that at the present time there are certain power facilities or properties, under the jurisdiction of the railway, which are employed in the process of supplying electrical energy necessary for operating that railway utility. The plan under consideration contemplates transfer of such properties to the jurisdiction of Hetch Hetchy, and, on future property constructions or acquisitions, an initial absorption thereof into the jurisdiction of the power utility.

It is my opinion that the management authority over the railway and power utilities given by Charter Section 121 to the Public Utilities Commission is sufficient to empower the Commission to make such transfer of jurisdiction and control over the concerned properties. Further, it is my view that it is not necessary, in order to effectuate the jurisdictional transfer of properties from the railway utility to the power utility, that the property transfer provisions of the Administrative Code be followed.

Chapter 23 of the Administrative Code of the City and County of San Francisco is titled "Real Property Transactions." Article II of that chapter (Sections 23.7 through 23.17) relates to "Interdepartmental Transfer of Real Property." Basically, these code sections provide for the transfer of "jurisdiction" over city-owned property from one "department" of city government to another department of city government. The moving concept in the procedure is that the department favored by the transfer "can more advantageously use" the property than can the department from whose jurisdiction the property is removed.

Procedurally, the code provides for initial request to the Mayor for transfer, such request being made by the department

Mr. James K. Carr

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desiring the transfer; report to the Mayor by the Director of Property; and final action by the Board of Supervisors, concluding the transfer by the official action of a resolution. Except for a transfer procedure which could not be applicable in our instant situation (see Admin. Code Sec. 23.15) - and this because of the complete management authority of the Public Utilities Commission over the two utilities here involved - ". . . No property shall be transferred from one department to another without the consent of the department having jurisdiction over the same" (Sec. 23.12.)

We may simplify the entire procedure by noting that the "department" element is present in two places: (1) one department wants to take the property from another department, and this upon a claim that the former can make a more advantageous use of it than can the latter; and (2) the consent of the latter is required as prerequisite to a transfer of jurisdiction over the property to the former. In this regard, Section 23.10 provides that:

"The officer, board or commission in charge of the department which desires to have the real property transferred to it shall file with the mayor a request in writing that the transfer shall be made"

As noted hereinabove, Section 23.12 recites that:

"No property shall be transferred from one department to another without the consent of the department having jurisdiction over the same"

If the Administrative Code provisions are interpreted as being intended to govern a management decision by the Public Utilities Commission to shift jurisdiction over utility property from one utility to another, when such property is completely compatible with the functions of either utility involved, this incongruity would result: the Public Utilities Commission would first be required to file with the Mayor a request for the transfer (Sec. 23.10, Admin. Code), and then the Mayor would be required to request of the Public Utilities Commission, or of the Municipal Railway, completely controlled by the management authority of that same Commission, that consent be given for such transfer. (Sec. 23.12, Admin. Code.)

Such a procedure would involve a patent absurdity, and it is a firm policy of law to avoid statutory interpretations which result in absurd or meaningless conclusions. (Jersey Maid Milk Products v. Brock, 13 Cal(2) 620; 45 Cal.Jur.(2) 631.) A reasonable

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construction must be impressed upon a legislative act, a construction practical rather than technical. (Great Western Distillery v. Wathen Distillery Co., 10 Cal(2) 442; Unemployment Reserves Commn. v. St. Francis Homes Assn., 58 Cal.App.(2) 271; 45 Cal. Jur.(2) 625-626.) Consonant with the need to avoid an absurdity, and to observe the need for reasonableness, we should interpret the inter-departmental transfer of real property provisions of the Administrative Code as being inapplicable to a management decision, such as the one under consideration, of the Public Utilities Commission.

The conclusion appears to be buttressed by the content of Section 23.8, as follows:

"The provisions of this article shall not be construed to abridge, modify or alter the powers granted to the public utilities commission, pursuant to the provisions of section 93 of the charter, or any powers granted any department by any other provision of the charter." (Emphasis added)

Clearly, the comprehensive management powers given by Charter Section 121 to the Public Utilities Commission would be abridged and modified by a requirement that real property jurisdictional transfers within the utilities structure be subject to the possible veto authority of any other city and county officer or body.

Hence, I conclude that the jurisdictional property transfer in question may be effected by the sole action of the Public Utilities Commission. However, and consistent with the spirit of the general procedure prescribed by Section 23.16 of the Administrative Code, a copy of any Public Utilities Commission resolution covering a jurisdictional transfer from the railway utility to the power utility should be sent to the Director of Property. In that way, he may "keep the same in his office and make the necessary record of the transfer." (See Sec. 23.16, Admin. Code.)

In reaching the foregoing conclusion regarding a jurisdictional transfer of real property, I have not been unmindful of the fact that when, in May, 1950, the Municipal Railway right of way in San Mateo County was transferred to the jurisdiction of the Water Department, the then-in-force counterpart (San Francisco Municipal Code, Secs. 158 - 162) of current Chapter 23, Article II, of the Administrative Code, was followed. That is, the jurisdictional transfer was processed through the Mayor and the Board of Supervisors - at the request of the Water Department "through the

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Public Utilities Commission," and consented to by the Municipal Railway "through the Public Utilities Commission." (See Board of Supervisors Resolution No. 9867 [Series of 1939]; Adopted 5/15/50; Approved 5/17/50.) In my opinion, that procedure was not required in 1950 - for all the same reasons set forth hereinabove, - and the fact that it was followed neither compels nor persuades me to conclude otherwise than already stated concerning the jurisdictional transfer issue now under consideration.

Finally, on the "discount price" question you are advised that if the contemplated transfer of personnel and property is effected, Hetch Hetchy could legally establish some favorable price at which the Municipal Railway would purchase power "at the trolley."

Charter Section 130, in the second paragraph, provides that utility "rates may be fixed at varying scales for different classes of service or consumers." Such is consistent with general principles of public utility law, and it seems clear that the character and uniqueness of Municipal Railway power operation, use and consumption qualify the railway as being a special class of consumer eligible for special treatment as to rates.

At the present time, Hetch Hetchy rates for electric energy - which include discount rates for City departments, the Municipal Railway as well as others - are as established by Public Utilities Commission Resolution No. 17962 (March 11, 1958), the same having been approved by the Board of Supervisors, pursuant to Charter Section 130, in Resolution No. 250-58 (Adopted 3/24/58; Approved 3/26/58).

If, as part of any transfer, the "discount price" intended to be established for the Municipal Railway should be other than as currently established under the resolutions just noted, such will trigger the legal necessity for observing all of the rate-fixing procedures prescribed by Charter Section 130. That is, the Public Utilities Commission would be required to consider such rate change at a public hearing, after appropriate public notice, as demanded by that charter provision. Thereafter, the proposed rate change would have to be submitted to the Board of Supervisors for approval.

You are advised as above set forth regarding the legal issues submitted.

Very truly yours,

WFB

THOMAS M. O'CONNOR
City Attorney

February 19, 1969

Honorable John A. Ertola
President, Board of Supervisors
235 City Hall
San Francisco, California 94102

Re: Ordinance Prohibiting Hitchhiking
from Sidewalk

Dear Supervisor Ertola:

This refers to your request concerning an ordinance which would make it unlawful for any person to stand on the sidewalk for the purpose of soliciting a ride from the driver of any vehicle. You refer to section 21957 of the Vehicle Code which provides:

"No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle."

Section 530 of the Vehicle Code defines a roadway as "that portion of a highway improved, designed, or ordinarily used for vehicular travel." A sidewalk is defined in section 555 of the Vehicle Code as "that portion of a highway other than a roadway set apart by curbs, barriers, markings or other delineation for pedestrian travel." Thus the areas defined as sidewalks and roadways are mutually exclusive and a person soliciting a ride from the sidewalk cannot be held to have violated section 21957 of the Vehicle Code (supra). Section 620 of the Vehicle Code provides, in part, as follows:

"The term 'traffic' includes pedestrians . . . while using any highway for purposes of travel."

A sidewalk is part of a highway according to section 555 of the Vehicle Code (supra). Section 467 of the Vehicle Code provides, in part: "A pedestrian is a person who is afoot . . ." Accordingly, a person who is afoot whether upon the roadway or sidewalk, whether in motion or not, and whether engaged in soliciting a ride or some other activity, is a pedestrian.

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In the leading case of Pipoly v. Benson (1942) 20 C.2d 366, the California Supreme Court, on page 369 of the decision, states:

'Where 'municipal affairs' are concerned the Constitution gives authority to local governments to make and enforce laws and regulations subject only to the provisions of their charters. (Const., art. XI, §6.) As to such matters local regulations are superior to the provisions of a state statute if there is conflict between the two. (Cases cited) The regulation of traffic upon the streets of a city, however, is not one of those municipal affairs over which the local authorities are given a power superior to that of the Legislature. (Cases cited) The state's control over the regulation of traffic includes the reciprocal rights and duties existing between motor vehicle traffic and pedestrian traffic which conflict between state and local regulation is concerned. (Cases cited) In such a field as that presented in this case where the particular matter is outside the limited groups of 'municipal affairs,' it is clear that local regulations upon the subject may be enforced only if they 'are not in conflict with general laws.' (Const., art. XI, §11.)"

And on page 372 the court states as follows:

"On this appeal plaintiffs urge that the ordinance involved is unconstitutional since it invades a field of traffic regulation which the Legislature intended to occupy fully. We think this contention is correct. Vehicle Code, section 458, which is found in division IX, chapter II of that code, provides: 'The provisions of this division are applicable and uniform throughout the State and in all counties and municipalities therein and no local authority shall enact or enforce any ordinance on the matters covered by this division unless expressly authorized herein.' Express authorization has been granted for local control over such matters as regulating processions, the operation of vehicles for hire and regulating traffic by means of officers or traffic signals. (Vehicle Code, §459.) Local authorities are also authorized to enact special rules and regulations dealing with parking of vehicles. (Vehicle Code, §472.) The regulation of pedestrian traffic in its use of the public roadways, however, is not a matter concerning which express authorization

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has been given for local regulation. (See Quinn v. Rosenfeld, 15 Cal. (2d) 486, 490 [102 P. (2d) 317].) It follows that if the use of public roadways by pedestrian traffic is a 'matter covered' by the provisions of division IX of the Vehicle Code, the Legislature's intent to occupy that field of regulation fully is clearly indicated by section 458 of that code."

(See also Fuentes v. Ling (1942) 21 C.2d 59.)

The decision in the Pipoly case has been the basis for numerous decisions which have held ordinances invalid on the grounds that they conflicted with general law on the subject of traffic control either expressly or by implication. In Mervynne v. Acker (1961) 189 Cal. App. 2d 558, page 561, the court states as follows:

"While local citizens quite naturally are especially interested in the traffic on the streets in their particular locality, the control of such traffic is now a matter of statewide concern. Public highways belong to all the people of the state. Every citizen has the right to use them, subject to legislative regulation. Traffic control on public highways is not a 'municipal affair' in the sense of giving a municipality (whether holding a constitutional charter or not) control thereof in derogation of the power of the state."

As heretofore noted, by definition, the term "traffic" includes pedestrians who are persons afoot and the term "sidewalk" is defined as part of a highway. It follows from an application of the language of the Mervynne and Pipoly cases (supra) heretofore quoted, to the aforesaid definitions, that control of pedestrians' conduct on sidewalks in relation to vehicular traffic is not a municipal affair.

The courts have specifically held that local ordinances dealing with the relationship of pedestrians to motor vehicle traffic are invalid as an attempt to legislate in a field that has been preempted by general law in the following cases: Stricklan v. Rosemeyer (1942) 52 Cal. App. 2d 558; Wooldrige v. Mounts (1962) 199 Cal. App. 2d 620, ordinances prohibiting persons being on a roadway other than at a safety zone or a crosswalk; Newton v. Thomas (1955) 137 Cal. App. 2d 748, ordinance prohibiting persons from standing in a roadway; Nosboone v. Brill (1942) 53 Cal. App. 2d 436; Holman v. Viko (1958) 161 Cal. App. 2d 87; Hom v. Clark

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(1963) 221 Cal. App. 2d 622, pedestrian crossing regulations conflicting with Vehicle Code sections on the same subject.

A person soliciting a ride from a sidewalk is within the area of the relationship of a pedestrian to motor vehicle traffic preempted by the state. Since the same is not a municipal affair a local ordinance prohibiting such activity would be invalid.

Very truly yours,

WRL

THOMAS M. O'CONNOR
City Attorney

January 30, 1969

Mr. Harry Albert
Assistant General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Salary Rights of Employee Upon
Reappointment in City Service

Dear Mr. Albert:

This refers to your inquiry regarding salary rights of Mr. Joseph F. Murphy upon re-entry into City service. The facts are summarized as follows:

Mr. Murphy was appointed on January 15, 1968, to the position, 8180 Principal Attorney, Civil and Criminal, in the office of the Public Defender. He had previously been appointed as a deputy city attorney on November 1, 1944, and continuously served in that position until his termination from City employment on February 7, 1958. He now claims that his current salary should be set at the fifth or highest step in the classification to which he was appointed, 8180 Principal Attorney, because he had served the requisite years of service in the comparable class of K-8, Principal Attorney, while in the City Attorney's office.

The employment of attorneys in the City and County service is governed by Section 142 of the Charter which authorizes their appointment outside the civil service requirements of the Charter. However, their salaries remain governed by Section 151 of the Charter, which provides:

"The board of supervisors shall have power and it shall be its duty to fix by ordinance from time to time, as in this section provided, all salaries, wages and compensations of every kind and nature, except

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pension or retirement allowances, for the positions, or places of employment, of all officers and employees of all departments, offices, boards and commissions of the city and county in all cases where such compensations are paid by the city and county."

The Annual Salary Standardization Ordinance fixes and determines the salaries and working conditions for those officers and employees subject to the provisions of Sections 151 and 151.1 of the Charter. The position, 8180 Principal Attorney, Civil and Criminal, is included within and governed by the provisions of the Salary Ordinance for the fiscal year 1967-1968.

The salaries of officers and employees who hold positions designated in the Salary Standardization Ordinance shall be paid the amount set forth for their respective positions in accordance with the plan of seniority increment as provided in said ordinance (Section VII[A]). Officers and employees shall enter City service at the minimum rate for their class unless otherwise provided by the Salary Standardization Ordinance. Rule 35 of the Rules of the Civil Service Commission provides:

"All officers and employees subject to salary standardization shall enter the service at the minimum rate for the class involved as set up in the currently existing salary ordinance unless such ordinance shall specifically provide otherwise, and shall advance to the maximum rate for such class in accordance with the provisions of such ordinance." (Emphasis added.)

Section VII of the Salary Standardization Ordinance determines compensation of employees upon transfer and reemployment and permits entry in the salary schedule at above the minimum rate under certain designated conditions. The salary rights of employees who have been terminated from appointive positions and then reappointed to another appointive position is governed by Section VII[D] of that ordinance which provides:

"An employee who holds an appointive position, whose services are terminated through lack of funds or reduction in force, and is thereupon appointed to another appointive position with the same or lesser salary schedule, shall receive a salary in the second position based upon the relationship of the duties and responsibilities and length of prior continuous service as determined by the civil service commission." (Emphasis added.)

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The salary to which Mr. Murphy is entitled upon reappointment to City service is governed by the Salary Standardization Ordinance. The above quoted provisions of Section VII[D] of said ordinance authorizes the Civil Service Commission to set the salary of a reappointed employee at any step within the salary schedule of the position to which appointed if the prior appointment had been terminated through lack of funds or reduction in force. Since Mr. Murphy's termination from his prior appointive position in the office of the City Attorney was not due to lack of funds or reduction in force, his salary under the provisions of the present Salary Standardization Ordinance should be set at the minimum rate of the salary schedule for the position to which he was appointed on re-entry into City service.

You are thus advised.

Very truly yours,

MCK

THOMAS M. O'CONNOR
City Attorney

February 24, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Proposed Pedestrian Bridge Over Kearny
Street to Connect Portsmouth Square and
Chinese Cultural Center; Right to Allow
Foundations of Bridge on Park Property

Dear Mr. Dolan:

This is in response to your request for an opinion as to whether the Board of Supervisors may legally permit the footings of a proposed pedestrian bridge extending across Kearny Street from the Chinese Cultural and Trade Center to Portsmouth Square so as to encroach upon the playground area of the square.

The following sections of the Charter quoted in part are applicable in answer to the question posed:

"Section 42. The recreation and park commission shall have the complete and exclusive control, management and direction of the parks, playgrounds, recreation centers and all other recreation facilities, squares, avenues and grounds which are in charge of the commission on the effective date hereof, or are thereafter placed in the charge of the commission, except as in this charter otherwise provided."

"Section 42.2. Except as provided in section 42.3, the commission shall not lease any part of the lands under its control nor permit the building or maintenance or use of any structure on any park, square, avenue or ground, except for recreation purposes, and each letting or permit shall be subject to approval of the board of supervisors by ordinance."

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Section 42.2 requires that a lease or permit for building or use of any structure on any square must be for recreational purposes, and each permit should be subject to approval of the Board of Supervisors by ordinance. Thus it is the primary responsibility of the Recreation and Park Commission to make a determination upon all the facts available to it as to whether or not the placing of the footings of the overpass on park lands would be consistent with the recreational purposes of the square. If the Commission determines that the erection of a bridge would be consistent with such purposes, it would have the authority subject to the approval of the Board of Supervisors to permit the placing of footings within Portsmouth Square.

In the case of Humbreys v. San Francisco (1928), 92 Cal. App. 69, the court discussed the right of the City and County of San Francisco in allowing a portion of Duboce Park to be used for street railway purposes. The court stated, at page 75, the following rule bearing upon uses to which park lands may be put:

"A distinction is to be observed between cases where land for a public park or square was dedicated without special restriction and cases where the dedication was restricted to a particular purpose. Where the dedication was without restriction any usual, proper and reasonable public use may be made of the park; but where a particular purpose was expressed the land must be used accordingly. This distinction is clearly apparent where, on the one hand, land has been dedicated for park purposes by a private individual, and where, on the other hand, the municipal corporation holds the full title to the land for public uses without restriction. Where title is in an individual the land must be used as directed by him. But where the municipality holds the title for public uses, without restriction, the legislative power may regulate the purposes for which the public may use the land, so long as such use is consistent with park purposes."

After reviewing the legal principles and the evidence and findings of the lower court, the Court of Appeals determined that the public use to which the small area of Duboce Park would be put when the proposed improvements were completed would not be inconsistent with the purposes for which the park was dedicated so as to constitute an unlawful use of the park.

In City and County of San Francisco v. Linares (1940), 16 Cal. 2d 441, the Supreme Court in construing the authority of the Park Commission acting for the city in leasing Union Square



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for the construction of an underground garage therein held that although during the construction there would be an interference with the surface use of the park, the interference would not be permanent and the permanent use of about 6-1/2% of the surface area of the square for entrances and exits should not block the proceedings.

In Best v. San Francisco, 184 Cal. App. 2d 396, 400, the court in construing the right of the city to change the contour of Portsmouth Square to allow the construction of an underground garage held it was permissible so long as there would be no unreasonable diminution of the use of the square for public enjoyment.

Portsmouth Square was reserved as a public square as part of the old Mexican Pueblo of San Francisco. The City and County of San Francisco holds title by an act of Congress and by letters patent from the United States. Portsmouth Square, therefore, was not dedicated by a private individual to the City with restriction for a particular purpose. The rule quoted above in the Humphreys case would then apply. The Recreation and Park Commission may make a determination from the evidence before it that the construction of a pedestrian overpass would be consistent with park purposes by affording better access to the park area and if it so finds it could legally permit the construction of the overpass. Such permit, of course, would have to be approved by the Board of Supervisors by ordinance.

It is my understanding after consultation with the Recreation and Park Department that the initial plans for construction of the overpass were referred to the Commission and were disapproved. Subsequent plans for the construction of an overpass have not been presented to the Commission for approval.

You are advised accordingly.

Very truly yours,

RAK

THOMAS M. O'CONNOR
City Attorney

February 25, 1969

Mr. James K. Carr
General Manager of Public Utilities
Room 287, City Hall
San Francisco, California 94102

Re: Financing of Acquisition of Municipal Railway
Rolling Stock - Leasing from Nonprofit Corporation

Dear Mr. Carr:

By Letter Opinion No. 67-93-A, dated December 11, 1967, you were advised that the proposed method of financing the acquisition of Municipal Railway rolling stock through a lease arrangement with a nonprofit corporation was legally feasible. The opinion stated in part as follows:

"The manner in which said financing is proposed to be accomplished is essentially as follows:

"a. The nonprofit corporation would enter into an agreement with the City whereby the corporation would agree to purchase, on a competitive bid basis and in strict accordance with City's specifications, all equipment required. The corporation would then lease the same to the City for a fixed term at an annual rental equal to (but in no event exceeding) the fair market value of the use of said equipment for each year of the term of the lease. Title to the equipment would vest in the City upon termination of the lease.

"The aforementioned method of financing is proposed as an alternative to an outright purchase of the equipment financed by a general obligation bond issue, which would require a two-thirds vote of the electorate. The primary question, therefore, is whether such a lease arrangement would create a municipal indebtedness or liability which

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would exceed in the year of its execution the income and revenue then available to the City in violation of article XI, section 18 of the State Constitution.

"In Dean v. Kuchel, 35 Cal. 2d 444, the California Supreme Court had occasion to rule on this very question. The Court held that a similar debt limitation provision of the Constitution was not violated by an instrument providing for (1) the leasing of real property to the State for a period of 25 years at a monthly rental of \$3,325 and (2) the vesting of all title in the State at the expiration of the lease if all covenants were performed. (See also City of Los Angeles v. Offner, 19 Cal. 2d 483; County of Los Angeles v. Byram, 36 Cal. 2d 694.) On the basis of the current decisions it is my opinion that the proposed lease arrangement would not create an indebtedness in violation of the constitutional debt limitation and would therefore be valid in this respect."

I am now informed that a change has been made in one of the provisions of the proposed lease wherein the City, as lessee, will have the option to purchase the equipment for a nominal sum, in lieu of the former provision for automatic vesting of title, at the termination of the lease. With this provision in mind, you have now requested to be advised as to the validity of the proposed lease arrangement with particular reference to the applicability or non-applicability of Section 74 of the Charter.

Section 74 of the Charter provides as follows:

"In the event the public utilities commission and the mayor shall propose a budget for any utility which will exceed the estimated revenue of such utility, it shall require a vote of two-thirds of all members of the board of supervisors to approve such budget estimate and to appropriate the funds necessary to provide for the deficiency. Such budget of expenditures in excess of estimated revenues may be approved to provide for and include proposed expenditures for additions, betterments extensions or other capital costs, in amount not to exceed three-quarters of one cent (\$.0075) on each one hundred dollars (\$100) valuation of property assessed in and subject to taxation by the city and county, provided that whenever tax support is required for additions, betterments, extensions or other capital costs the total provision for such purposes shall not exceed an amount

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equivalent to three-quarters of one cent (\$.0075) on each one hundred dollars (\$100) valuation of property subject to taxation by the city and county and provided further that proposed expenditures for additions, betterments, extensions or other capital costs in excess thereof shall require financing by authorization and sale of bonds. This section shall have precedence over section 127 of this charter and any other section deemed in conflict herewith."

Prior to its amendment in 1957, Section 74 contained the following provision:

"No such budget of expenditures in excess of estimated revenues shall be so approved to provide for and include proposed expenditures for additions, betterments, extensions or other capital costs, which shall require financing by authorization and sale of bonds."

In the ballot argument submitted to the electorate at the General Election of November 6, 1956, it was stated that the purpose of the charter amendment was to make it possible for a municipal utility which is not self-supporting to make minor capital improvements without resorting to the time-consuming and costly procedure of passage of a bond issue by allowing 3/4 of 1 cent in the tax rate for each tax supported utility for capital costs.

Since the Municipal Railway is a deficit utility any capital expenditure would be subject to the limitation imposed by Section 74.

The crucial question posed by your request is whether the periodic payments under the proposed lease arrangement for the use of equipment constitute a capital cost within the meaning of Charter Section 74.

For the reasons hereinafter stated, I am of the opinion that the aforesaid periodic payments are bona fide rentals and as such constitute a current operating expense and not a capital cost.

In Dean v. Kuchel, supra, commencing at page 446, the California Supreme Court stated:

"It is urged that the instrument violates the constitutional provision reading in part: 'The Legislature shall not, in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except'

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and then follow certain exceptions and provision for approval by the voters. (Cal. Const. art. XVI, § 1.)

"The latest authoritative ruling upon whether obligations incurred under instruments similar to the one here involved violate the debt limitation in the Constitution was made in City of Los Angeles v. Offner, 19 Cal. 2d 483 [122 P.2d 14, 145 A.L.R. 1358], which was concerned with the debt limitation on municipal corporations and other local government agencies. (Cal. Const. art XI, § 18.) It is conceded that the same principles apply to both constitutional provisions. There a contractor agreed to build an incinerator on city owned land which the city leased to him for 10 years at a rental of \$1.00 per month, and he leased to the city the land and incinerator to be erected thereon for nine years and nine months, at a specified monthly rental. The city was given an option to buy the incinerator at various intervals during the term of the lease at a minimum price fixed by a schedule. If the city elected to exercise its option the purchase price was to be fixed by appraisers but not less than the minimums. Title to the incinerator was to remain in the contractor and if the option was not exercised it could be removed. This court stated the law to be: 'It has been held generally in the numerous cases that have come before this court involving leases and agreements containing options to purchase that if the lease or other agreement is entered into in good faith and creates no immediate indebtedness for the aggregate installments therein provided for but, on the contrary, confines liability to each installment as it falls due and each year's payment is for the consideration actually furnished that year, no violence is done to the constitutional provision. (McBean v. City of Fresno, 112 Cal. 159 [44 P.353, 53 Am. St. Rep. 191, 31 L.R.A. 794]; Smilie v. City of Fresno, 112 Cal. 311 [44 P.556]; Higgins v. San Diego Water Co., 118 Cal. 524, 553 [45 P.824, 50 P.670]; Doland v. Clark, 143 Cal. 176, 180, 181 [76 P.958]; Krenwinkle v. City of Los Angeles, 4 Cal. 2d 611, 613 [51 P. 2d 1098].) If, however, the instrument creates a full and complete liability upon its execution, or if its designation as a 'lease' is a subterfuge and it is actually a conditional sales contract in which the 'rentals' are installment payments on the purchase price for the aggregate of which an immediate and present indebtedness or liability exceeding the constitutional limitation arises against the public entity, the contract is void. (Chester v. Carmichael, 187 Cal.

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287 [201 P.925]; In re City and County of San Francisco, 195 Cal. 426 [233 P.965]; Mahoney v. City and County of San Francisco, 201 Cal. 243 [257 P.49]; Garrett v. Swanton, 216 Cal. 220 [13 P.2d 725].)

"The rule as applied to each of these situations is well stated in Garrett v. Swanton, *supra*, at page 226, as follows: 'The law is well settled in this state that installment contracts of any kind, where the installment payments are to be made over a period of years and are to be paid out of the ordinary revenue and income of a city, where each installment is not in payment of the consideration furnished that year, and the total amount of said installments when coupled with the other expenditures exceeds the yearly income, are violative of the constitutional provision in question unless approved by a popular vote. This is so whether the contract be denominated a mortgage, lease, or conditional sale. . . . It is true that under the doctrine enunciated in McBean v. City of Fresno, 112 Cal. 159 [44 P.358, 53 Am.St.Rep. 191, 31 L.R.A. 794] . . . contracts for the furnishing of property in the future have been upheld, but only where no liability or indebtedness came into existence until the consideration was actually furnished. In other words, such contracts are valid where each year's installment is within the city's income, and where each year's payment is for the consideration actually furnished that year.' No useful purpose would be served by reviewing other cases on the subject. We find no logical distinction between the Offner case and the one at bar. It is true that there was an option to purchase in the former rather than a vesting of title at the end of the term in the instant case, but as far as liability is concerned, the state under the instrument here is in a better position, for it gets title without the payment of anything other than the rental. The essence of the Offner rule is that the payments are for a month to month use of the building. Here it is clearly stated that the rentals are for that purpose. There is no substantial or logical difference between the option to purchase in the Offner case and the vesting of title at the end of the term in this case. True, the city was not bound to execute the option and thus pay the purchase price, but it was required to pay the rentals. Here the rentals also must be paid but the state need not pay any more. We are satisfied therefore that the instant transaction qualifies as a lease for the purpose of the debt limitation." (Emphasis added.)

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(See also County of Los Angeles v. Byram, 36 Cal. 2d 694, 700 approving both the Dean and Offner cases.)

A very recent case in point is Ruane v. City of San Diego (Nov. 21, 1968), 267 A.C.A. 605.

Pursuant to a leasing arrangement substantially similar to that proposed herein, the City of San Diego rented motor coaches from a nonprofit corporation under a written 5 year lease which provided for payment semi-annually of a specified rental and transfer to the City of title to the rental property upon satisfaction of the corporation's obligation to the bank incurred to acquire the motor coaches. At page 612, the Court said:

"City's monetary obligation under the lease was to pay \$2,206,000 concurrently with execution of the lease, as prepaid rental, and the further sum of \$360,000 on every January 15th and July 15th during the term of the lease, which was for the period from July 1, 1967 through May 31, 1972. There is no acceleration clause. Upon default the maximum obligation of City remains the same, i.e., to pay the designated semi-annual payments. (See County of Los Angeles v. Nesvig, 231 Cal.App.2d 603, 611 [41 Cal.Rptr. 913].) The semi-annual rental is not payable until the due date. No indebtedness or liability therefor arises until that date. The consideration for each rental payment is the right to possess and use the leased property during the subsequent six month period. Leasing Corporation agrees to transfer ownership of the leased property to City when the former satisfies its obligation to the bank, a condition wholly unrelated to City's liability to pay rental. In all substantial aspects the lease conforms to those upheld against constitutional attack in County of Los Angeles v. Byram, 36 Cal.2d 694, 700 [227 P.2d 4]; Dean v. Kuchel, 35 Cal.2d 444, 446 [218 P.2d 521]; City of Los Angeles v. Offner, supra, 19 Cal.2d 483, 485; McBean v. City of Fresno, 112 Cal. 159, 164, 167 [44 P.358], County of Los Angeles v. Nesvig, supra, 231 Cal.App.2d 603, 609, 616 and City of LaHabra v. Pellerin, 216 Cal.App.2d 99, 101 [30 Cal.Rptr. 752].

"City's method of acquisition and operation of the transportation system without approval of two-thirds of the voters is not invalid because Leasing Corporation agreed to transfer ownership of the buses and other property acquired by it to City upon satisfaction of its obligation to the bank (Dean v. Kuchel, supra, 35 Cal.2d 444, 447; City of Los Angeles v. Offner, supra, 19 Cal. 2d 483)."

Mr. James K. Carr

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Here, as in Ruane, the City's obligation will be to pay the rent on January 15 and July 15 of each year during the term of the Equipment Lease; there is no acceleration clause; upon default the maximum obligation of the City remains the same, i.e., to pay the designated semi-annual payments; the semi-annual rental is not payable until the due date; no indebtedness or liability arises until that date; and the consideration for each rental payment is the right to possess and use the leased property during the subsequent six month period.

From the above authorities it can readily be observed that the essential difference between a lease with either an option to purchase or providing for vesting of title at the termination thereof and an installment purchase is that in the former each year's payment, i.e. rent, is for the consideration actually furnished during that year, whereas in the latter each installment is not in payment of the consideration furnished that year but a payment on the purchase price for the aggregate of which an immediate and present indebtedness is created. Under the lease agreement the periodic rental payments benefit only the current period. Under the installment purchase agreement the periodic payments are for the acquisition of a fixed asset having a useful life in excess of the current year and hence are intended to benefit future periods. As will next be observed this difference is essentially the same as that which distinguishes an operating expense from a capital cost.

A capital cost or expenditure is defined as an expenditure which benefits future periods in contrast to a revenue or operating expenditure which benefits a current period. (See Kohler's Dictionary for Accountants. Prentice-Hall, 1952, page 72.)

It is therefore clear that in this instance there is no substantial or logical difference whatever between the constitutional debt limitation on the one hand and the charter limitation on the other. In either case, if the agreement is a true lease, the limitation is not applicable.

Based on the foregoing, it is clear that the instant transaction in all respects qualifies as a bona fide lease, as distinguished from an installment purchase for the acquisition equipment. The periodic payments in the proposed lease are the consideration for the right to possess and use the equipment during the period and are therefore chargeable to that period as a current operating expense. Such payments are not a capital cost within the meaning of Section 74 of the Charter.

Mr. James K. Carr

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February 25, 1969

In conclusion, it is my opinion that Section 74 has no applicability whatever to the proposed lease arrangement.

You are advised accordingly.

Very truly yours,

JC

THOMAS M. O'CONNOR
City Attorney

February 26, 1969

Mr. S. Myron Tatarian, Director
Department of Public Works
260 City Hall
San Francisco, California 94102

Subject: License Fees for Apartment Houses; Federal
Housing Administration, Redevelopment Agency
of the City and County of San Francisco, and
San Francisco Housing Authority

Dear Mr. Tatarian:

This refers to your letter regarding the refusal of the Federal Housing Administration to pay apartment house license fees relative to FHA-owned apartment houses. In addition, you inquire as to whether Redevelopment Agency of the City and County of San Francisco and San Francisco Housing Authority owned apartment houses are subject to this license fee. It is assumed throughout this opinion that the apartment houses are both owned and operated by the FHA, the Redevelopment Agency of the City and County of San Francisco and the San Francisco Housing Authority.

Article II, Part III, Section 26, of the San Francisco Municipal Code provides, in part, that "Every person, firm, partnership or corporation maintaining, conducting or operating an apartment house shall pay an annual license fee . . ." The fee schedule is based upon the number of rooms in the apartment house.

Federal Housing Administration

The basic question is whether a local government can levy a license fee against the owners of an apartment house when the owner is an agency of the United States Government, without express congressional authorization.

Mr. S. Myron Tatarian

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The recent California case of U.S. v. County of San Diego (1966), 249 F. Supp. 321, discusses the law applicable to the basic situation outlined above. This case concerned a suit by the United States to recover from the county taxes relating to the taxation of personal property held by the Federal Housing Administration. The court held that the waiver of local tax immunity of property owned by FHA is limited solely to real property.

It is axiomatic that the United States, or its instrumentality, is exempt from local taxes unless Congress affirmatively provides otherwise. (U.S. Const., Art. IV, Sec. 3, Cl. 2 and Cal. Const., Art. XIII, Sec. 1.) The burden is on the taxing authority to show that United States property is not immune from taxation. (See U.S. v. San Diego, supra, p. 322.)

You have provided me with a copy of a letter from the Chief, Office of the General Counsel, Federal Housing Administration, in which he concluded that the FHA has no authority to pay the license fee contained in Section 86 of our Municipal Code. 12 U.S.C. 1714 is relied on for the proposition that Congress waived the government immunity only from paying real estate taxes on property acquired by FHA. The contention is that the license fees at issue are a direct levy against apartment house owners. Thus, the basic question is whether 12 U.S.C. 1714, set forth below, is a consent by Congress to the imposition of a license fee against the FHA as an owner of real property:

"§1714. Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Secretary under this subchapter from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed."

I concur with this position. On its face, 12 U.S.C. 1714 provides that the real property held by FHA shall be subject to taxation as other real property is taxed "according to its value." Section 86 of Article II, Part III, of the San Francisco Municipal Code imposes not a tax on property according to its value, but rather a license fee without any reference to the value of the property for purposes of regulation. It is also noted that Section 86 is a levy not on the property as such, but on the person or firm maintaining, conducting or operating said property. Nothing in 12 U.S.C. 1714 can be interpreted as amounting to congressional consent to such levy.

Mr. S. Myron Tatarian

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February 26, 1969

I am therefore of the opinion that FHA-owned and operated apartment houses are immune from a payment of apartment house license fees under Section 86 of Article II, Part III, of the San Francisco Municipal Code.

You have also inquired as to the applicability of Section 86 of our Municipal Code to Redevelopment and Housing Authority owned and operated apartment houses.

Initially, it should be noted that the Charter of the City and County of San Francisco, Section 24, provides, in part:

"The board of supervisors shall regulate, by ordinance, the issuance and revocation of licenses and permits . . . for the operation of businesses or privileges which affect the health, fire-prevention, fire-fighting . . . welfare or zoning conditions of or in the city and county. . . . Such ordinances shall fix the fees or licenses to be charged, which shall not be less than the cost to the city and county of regulation and inspection. . . . Said ordinance shall also specify which department shall make the necessary investigations and inspections and issue or deny and may revoke the permits and licenses therefor."

San Francisco Housing Authority

The basic provisions of law setting up the formation of the Housing Authority and its continuing powers are found in Division 24, Part 2, Health and Safety Code, beginning with Section 34200. Section 34240 of the Code provides:

"In each county and city there is a public body corporate and politic known as the housing authority of the county or city. The authority shall not transact any business or exercise its powers unless, by resolution, the governing body of the county or city declares that there is need for an authority to function in it."

The Housing Authority of the City and County was activated pursuant to this Code.

The State Housing Authorities Law, Section 34326 of the Health and Welfare Code, provides that "all housing projects are subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the

Mr. S. Myron Tatarian

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housing project is situated." In my opinion, this section allows application of Section 86 of the Municipal Code as to San Francisco Housing Authority owned and operated apartment houses, unless otherwise modified by Cooperation Agreements.

Dating back to 1939, various Cooperation Agreements have been entered into between the City and County of San Francisco and the San Francisco Housing Authority. The Cooperation Agreement of 1939 contained the following language:

"The City agrees to waive such building, inspection and rezoning fees as might be payable by the Authority if it is or becomes subject to the payment of such fees."

The 1949 Cooperation Agreement, covering the erection of 3,000 units, provides in Section 5(d) thereof that the City shall "waive any building and inspection fees to which the local authority or any project might otherwise be or become subject."

The 1965 Cooperation Agreement, covering the erection of an additional 2,500 units does not contain this language expressly waiving such fees. However, I am advised by the counsel for the Housing Authority that the omission of the language waiving such fees in the 1965 Cooperation Agreement was unintentional and that the Housing Authority is presently preparing an amendment to the 1965 Cooperation Agreement providing for the inclusion of a provision whereby the City will agree to waive building and inspection fees.

Redevelopment Agency of the City
and County of San Francisco

The formation of the Redevelopment Agency of the City and County of San Francisco is authorized pursuant to State statutes (Division 24, Part 1, Health and Safety Code, Section 33000, et seq.). Section 33100 of the Code provides that "There is in each community a public body, corporate and politic, known as the redevelopment agency of the community." The Redevelopment Agency is a State agency and its officers are State officers. (See Fellom v. Redevelopment Agency (1950), 157 Cal. App. 2d 243; Housing Authority v. City of Los Angeles (1952), 38 Cal. 2d 853; cert. den. 344 U.S. 836.)

Sections 53090 and 53091 of the Government Code contain State authorization for application of Section 86 of the Municipal Code against Redevelopment Agency owned and operated apartment houses. Section 53090 provides in part "(a) 'Local agency' means

Mr. S. Myron Tatarian

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an agency of the State for the local performance of governmental or proprietary functions within limited boundaries." Section 53091 provides in part "Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated."

To summarize, (1) the City and County of San Francisco cannot enforce its ordinance requiring a license fee for the owner or operator of apartment houses when the apartment houses are owned and operated by the Federal Housing Administration; (2) regarding the San Francisco Housing Authority, the ordinance cannot be enforced for units constructed under the 1939 and 1949 Cooperation Agreements. The ordinance can be enforced for units constructed under the 1965 Cooperation Agreement, unless the Housing Authority is successful in its attempt to amend the 1965 Cooperation Agreement; (3) the ordinance can be enforced as against apartment houses owned and operated by the Redevelopment Agency of the City and County of San Francisco.

Very truly yours,

GEK

THOMAS M. O'CONNOR
City Attorney

February 25, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California

Subject: Procedure for Site Selection for
Construction of Public Housing Units;
Jurisdiction of Board of Supervisors

Dear Mr. Dolan:

This is in response to your recent letter wherein you advise that the Planning and Development Committee has been requested to commence hearings to determine what sites are available or may become available for construction of public housing units approved by the electorate and requesting my advice as to what is the legally established procedure for such site selection and whether at this point any jurisdiction in this regard is delegated to the Board of Supervisors.

The law relating to public low-rent housing in the State of California is contained in the Housing Authorities Law (Health and Safety Code, Secs. 34200-34380) and the Housing Cooperation Law (Health and Safety Code, Secs. 34500-34521).

Health and Safety Code Section 34313 requires that the local governing body approve by resolution any low-rent housing project proposed to be developed, constructed, or owned by a housing authority after September 15, 1945, but this section relates to the proposal per se, and not to the specific location or locations of the units comprising said project. Pursuant to this section, the San Francisco Board of Supervisors approved a low-rent housing project of 3000 units in 1949 (Resolution No. 9268 (Series of 1939), approved November 22, 1949) and approved a second low-rent housing project of 2500 units in 1965 (Resolution No. 6-65, approved January 7, 1965). In both of these resolutions the Board of

Mr. Robert J. Dolan

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Supervisors expressly reserved the right of approval of the specific location of such project or units thereof. At the general election held in the City and County on Tuesday, November 5, 1968, the electorate approved a proposal for a low-rent housing project consisting of an additional 3000 units to be developed and constructed by the San Francisco Housing Authority. To date, no proposal relating to this project has been submitted by the Housing Authority to the Board of Supervisors for its approval pursuant to Health and Safety Code Section 34313.

With respect to the acquisition of specific real property for the development and construction of a low-rent housing project, Health and Safety Code Section 34315(d) generally empowers a housing authority to acquire such real property by eminent domain and Section 34325 thereof refines this power in that a housing authority must first adopt a resolution declaring that the real property described therein is necessary for housing authority purposes. Sections 34315(d) and 34325 of the Health and Safety Code have been held as placing responsibility for the selection of a particular site or sites for a low-rent housing project in the Housing Authority. (Housing Authority v. Forbes, 51 Cal.App.2d 1.)

Accordingly, it is my opinion that site selection of low-rent housing units is a function primarily within the jurisdiction of the Housing Authority and no jurisdiction other than the power of approval of such sites as selected by the Housing Authority where provided by resolution is vested in the Board of Supervisors.

Very truly yours,

JJS

THOMAS M. O'CONNOR
City Attorney

February 3, 1969

Honorable Jack Morrison, Chairman
Social Services Committee
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Wisconsin Temporary War Housing Site;
Proposal Submitted by Potrero Hill
Residents Relating to Future Use Thereof

Dear Supervisor Morrison:

You have requested my opinion as to the feasibility of a proposal for the development of the subject property submitted to your Board by an ad hoc committee composed of representatives of organizations of the Potrero Hill neighborhood and preparation of a draft resolution for consideration by your Committee incorporating as nearly as possible the desires of the residents as expressed in their proposal.

In summary, the proposal submitted herein recommends that the subject property be made available to a sponsor for development of family housing and related community facilities as well as commercial development if such commercial development would be economically feasible. Ninety per cent of the site would be devoted to residential uses and the balance would be reserved for community facilities such as a day-care center, a community center, a pre-school building and the aforesaid commercial uses.

One-third of the housing would be made available to families of lower income, i.e., families whose income is in excess of public housing maximums but less than 150 per cent of said maximums; one-third of the housing would be made available to families of moderate income, i.e., families whose income is in excess of lower income maximums but less than Section 221(d)(3) maximums; and the remaining one-third of the housing would be made available to families of middle income, i.e., families whose income is in excess of moderate income maximums.

Honorable Jack Morrison

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Lower income and moderate income units would be developed as part of a single project under the provisions of Section 236 of the Housing and Urban Development Act of 1968 as rental housing and later sold as condominium units under the provisions of Section 235 of said Act. Rental charges and monthly purchase payments would be fixed as provided for in the applicable sections of said Act.

Middle income units would be developed for outright sale, not to exceed \$30,000 in price.

The Committee strongly recommends that in addition to the economic balance inherent in its proposal, the new development start out with and maintain a racial balance using every practical means within legal limits to do so.

Finally, the Committee recommends that, within the limitations imposed by the terrain, the housing be designed so as to create a "neighborhood" rather than a "project" atmosphere and that preferences, where possible, be given to local developers and contractors as well as employment preference to lower income persons residing in the area.

In reviewing the proposal herein, I am unable to determine in what manner the subject property would be "made available" to a sponsor for the development outlined in said proposal. If the property were to be made available by declaring the same to be surplus and sold in accordance with the provisions of Section 92 of the Charter, the sponsor could proceed with the development as proposed subject only to compliance with federal law and the regulations issued by the Secretary of Housing and Urban Development pursuant thereto.

If, on the other hand, the proposal contemplates that the property be made available to a sponsor at less than fair market value the development would be subject to the additional restrictions set forth in City Attorney's Opinion No. 64-30, dated December 30, 1964.

In that opinion it was pointed out that assistance in the development of moderate priced private housing could be found to be a municipal public purpose so as to justify the City and County making its property available for such a purpose at less than its fair market value. The inclusion in the proposal of housing units for families whose income is in excess of moderate income goes beyond the bounds of Opinion No. 64-30 and, in my opinion, could not be found to be a municipal public purpose

Honorable Jack Morrison

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so as to justify participation by the City and County in furtherance of the proposal.

In the light of the foregoing, I have prepared and enclose herewith a draft resolution endorsing the policy statement and urging its immediate implementation to the fullest extent consistent with applicable laws and regulations for consideration by your Committee.

Very truly yours,

JJS

THOMAS M. O'CONNOR
City Attorney

Enclosure

February 4, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California

Subject: Commuter Tax Ordinance Litigation

Dear Mr. Dolan:

This is in response to your January 13, 1969 letter inquiring as to the present status of the commuter tax litigation and seeking confirmation of the Finance Committee's understanding that if the legality of the tax is upheld it would be effective retroactively to January 1, 1969. You also request my opinion as to when a final decision in the litigation will be rendered.

As to the present status of the case, you are advised that a notice of appeal has been filed, but the reporter's transcript has not yet been completed and filed. When the reporter's transcript has been received the briefs will be filed.

One of the grounds of challenge to the validity of the ordinance was its unconstitutionality under the provisions of the Constitution of the United States and as this connotes possible U.S. Supreme Court jurisdiction, I am unable to give you an opinion as to when the litigation will be finally concluded.

The injunction issued by the Superior Court reads as follows:

"IT IS ORDERED that:

"1. During the pendency of this action, or until the Court shall otherwise order, the defendants, and each of them, those acting in their behalf, and all persons acting in concert or participating with them,

Mr. Robert J. Dolan

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shall be and hereby are enjoined from enforcing, executing, administering, or collecting fees under, Ordinance No. 246-68 of the City and County of San Francisco, or in any other manner implementing or giving effect to said Ordinance."

While this injunction remains in effect the City is prohibited from collecting the tax due under this ordinance. Under the terms of the ordinance the employees defined therein are the taxpayers but the employers of such employees are required to withhold the tax from the employees' compensation. The employers are thereby made agents of the City in the collection of the tax. (See: Ainsworth v. Bryant, 34 Cal.2d 465.) The injunction is therefore effective to also prohibit the employers from deducting the tax from the employees' compensation while the injunction remains in effect. If the validity of the ordinance is ultimately sustained by the appellate courts and the injunction is dissolved, the tax would then be due and payable from the employees subject thereto effective January 1, 1969. (See: Hall v. Superior Court, 45 Cal.2d 377, 381; People ex rel. Dept. Pub. Wks. v. Lagiss, 223 Cal.App.2d 23, 44-45.) It would then be incumbent upon the employers to deduct from the compensation of such employees who are then in their employ past due, as well as current taxes based on the January 1, 1969 effective date of the ordinance. If an employee left the employment of the employer while the injunction was in effect, then it would be incumbent upon the City to proceed directly against such employee for the past due taxes. (See: La Societe Francaise v. Cal. Emp. Comm., 56 Cal.App.2d 534.)

You are thus advised.

Very truly yours,

TJB

THOMAS M. O'CONNOR
City Attorney

February 10, 1969

Mr. George J. Grubb
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California

Subject: Non-Civil Service and Temporary Limited
Tenure Employees; Salary Rights Upon
Appointment to Higher Classification

Dear Mr. Grubb:

This is in reply to your letter requesting my opinion concerning the salary rights of five employees (Willie Alexander, Anna Chew, Helen Clark, Frances Curtis and Barbara Price) who on July 16, 1968, accepted non-civil service appointments to Class 2903 Eligibility Worker. Each of the employees entered the appointed class at a salary above the entrance level and continued to receive the higher rate for four months. On August 1, 1968, they were appointed permanent limited tenure to the same class.

Prior to their appointment, three of the subject employees were temporary limited tenure and two were non-civil service appointees in Class 1426 Senior Clerk Typist and all were in a salary range above the entrance level for that class.

It was later discovered through a timeroll audit that the employees were given a salary increment and that they should have received the entrance salary rate upon appointment to Class 2903 Eligibility Worker.

The question is raised by your request whether a non-civil service or temporary limited tenure employee is entitled to a salary increment upon appointment to a higher classification deemed to be promotive.

Section VII of the Salary Ordinance prescribes the method

Mr. George J. Grubb

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of payment for all officers and employees who are subject to salary standardization. Section VII provides that ". . . an employee or officer who is a permanent appointee following completion of the probationary period or six months of permanent service and who is appointed to a position in a higher classification deemed to be promotive . . ." (emphasis added) is entitled to certain salary increments upon appointment. It is my opinion that the quoted language of Section VII means that a permanent civil service, permanent exempt or permanent limited tenure appointee is entitled to a salary increment upon promotion if such permanent civil service appointee has completed the probationary period or, in the case of a permanent exempt or permanent limited tenure appointee, if such appointee has completed six months of permanent service. Since the subject employees were not permanent appointees, but rather non-civil service or temporary limited tenure appointees, they were not entitled to the salary increment provided for under Section VII of the Salary Ordinance, and therefore, they should have received the entrance salary upon appointment to Class 2903 Eligibility Worker.

It is well settled that compensation of public officers and employees depends solely on statute and money paid by a governmental agency without authority of law may be recovered from the officer or employee. (County of San Diego v. Milotz, 46 Cal.2d 761, 767; County of Marin v. Messner, 44 Cal.App.2d 577, 585; Irwin v. County of Yuba, 119 Cal. 686, 690; Sarter v. Siskiyou County, 42 Cal.App. 530, 534.) The overpayment of salary may be recovered regardless of whether it was made under a mistake of fact or a mistake of law (Aebli v. Board of Education, 62 Cal.App.2d 706, 725; Holtzendorff v. Housing Authority, 250 Cal.App.2d 596, 632; Foster v. Pension Board, 23 Cal.App.2d 550, 555); and such illegal payment cannot be ratified nor can the public entity be estopped to recover the unauthorized salaries except in rare and unusual circumstances. (Aebli v. Board of Education, supra, at 728-29.)

An estoppel generally exists where an innocent party relies in good faith upon an affirmative act or representation and alters his position to his detriment as a result of such representation. (See Donovan v. City of Santa Monica, 83 Cal.App.2d 336, 394.) It is a general rule that in the absence of unusual circumstances an estoppel will not be invoked against a municipality. (La Societe Francaise v. California Emp. Com., 56 Cal.App.2d 534; McSee v. City of Los Angeles, 6 Cal.2d 390.) The subject employees had been employed by the City for two and a half to four years and were receiving a salary above the entrance rate for their positions. The Department of Social Services advised the employees that upon accepting the non-civil service appointment to 2903 Eligibility Worker, they would receive a salary increase and be placed in a salary range above the entrance level. It is reasonable to conclude

Mr. George J. Grubb

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February 10, 1969

that this salary increase induced the employees to accept the new appointments and if they had been advised that their salary would be set at the entrance rate, the employees would have remained in their prior positions. It is noted that when the employees were advised of the salary error, they relinquished the appointments and returned to their previous positions. The elements of an estoppel appear clearly established in that the employees altered their positions to their detriment as a result of representations that they would receive a salary increase. These facts, in my opinion, constitute such rare and exceptional circumstances as to invoke an estoppel against the City and County and deny its recovery of the excess salaries paid to the subject employees.

You are thus advised.

Very truly yours,

MCK

THOMAS M. O'CONNOR
City Attorney

February 11, 1969

Honorable John Ertola, President
Board of Supervisors
235 City Hall
San Francisco, California

Subject: Proposed Legislation Requiring
City Departments to Comply With
Proper Decisions of Board of
Permit Appeals

Dear Supervisor Ertola:

This is in response to your letter requesting that I draft an amendment to the Administrative Code which will require the Department of Public Works and any other City and County department to give full force and effect to decisions of the Board of Permit Appeals made subsequent to the processing of an appeal according to applicable law.

You are advised that the Department of Public Works and other affected City and County departments are required under existing law to give full force and effect to decisions of the Board of Permit Appeals rendered within the scope of its jurisdiction and authority. (See: Charter Sections 39 and 117.3; Sec. 14, Part III of the San Francisco Municipal Code; City and County of San Francisco v. Superior Court, 53 Cal.2d 236; Board of Permit Appeals v. Central Permit Bureau, 186 Cal.App.2d 633.)

If, in rendering a particular decision, the Board of Permit Appeals exceeds its jurisdiction and authority such as in ordering a permit granted for an operation or activity prohibited by ordinance or other controlling law, then such order is void and the affected departments are without power to issue the permit as a ministerial officer cannot be administratively ordered to do that which the law prohibits him from doing. (See: Plum v. City of Healdsburg, 237 Cal.App.2d 308; Russian Hill Improvement Assn. v.

Honorable John Ertola

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February 11, 1969

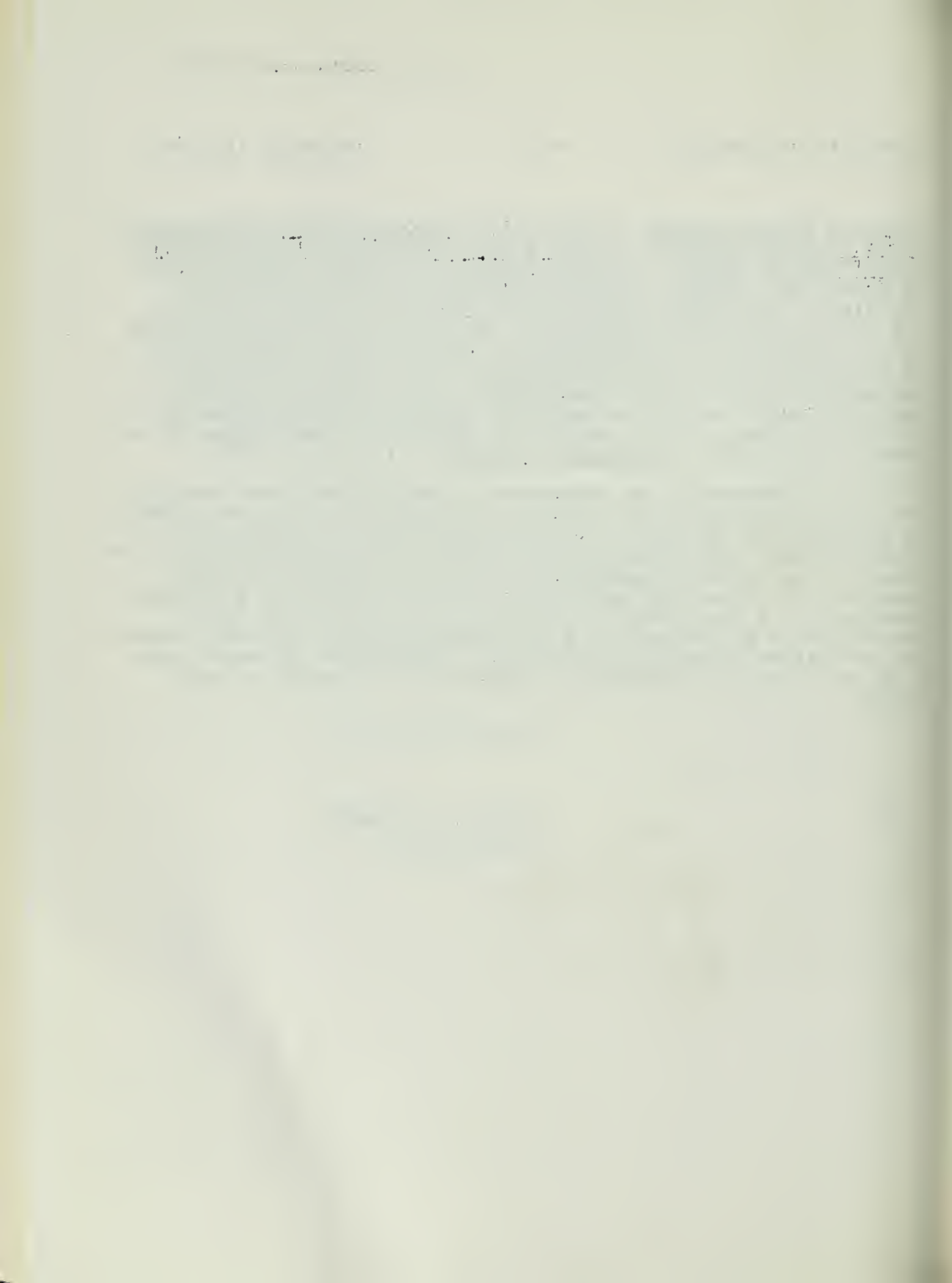
Board of Permit Appeals, 66 Cal.2d 34; City and County of San Francisco v. Superior Court, supra; Board of Permit Appeals v. Central Permit Bureau, supra.) To grant the permit in such case would be to effect an amendment to the controlling law which would be a legislative act beyond the powers of the Board of Permit Appeals and the affected City departments. If there is to be an exception to the requirements of an ordinance, such exception would have to be accomplished by a legislative act of the Board of Supervisors by appropriate provision in or amendment to the ordinance and such exception would have to be uniformly applicable to the class to which it applies. (See: Sec. 21 of Article I, Constitution of the State of California; Bernstein v. Smutz, 83 Cal.App.2d 108.)

Inasmuch as the Department of Public Works and other City and County departments are required by existing law to give effect to decisions of the Board of Permit Appeals rendered within the scope of their jurisdiction and authority and it would be beyond the power of the Board of Supervisors to enact a general ordinance requiring the Department of Public Works and other City and County departments to give effect to decisions of the Board of Permit Appeals which are in excess of its jurisdiction and authority under the provisions of specific ordinances, the Charter, or state law, I am not submitting herewith the legislation requested in your letter.

Very truly yours,

TJB

THOMAS M. O'CONNOR
City Attorney



February 11, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California

Subject: Night Differential Pay For
Members of the Police Department

Dear Mr. Dolan:

You have asked on behalf of the Legislative and Personnel Committee for my opinion as to whether a Charter amendment would be necessary in order to pay members of the Police Department night differential pay.

Under Section 35.5.1 of the Charter, the Board of Supervisors by ordinance sets the rates of compensation for police officers as shall not exceed the highest rate of compensation paid such officers in the respective police departments of all cities of 100,000 population or over in the State of California, based on the latest federal decennial census. The highest rates of compensation are certified to the Board of Supervisors by the Civil Service Commission after a statewide survey. The rates so certified may include only the basic amount of wages, with included range scales, and must exclude any working benefits or premium pay for night shift work. Therefore, the Board of Supervisors could not provide night differential pay to members of the Police Department as part of the rates of compensation which it sets by ordinance pursuant to Section 35.5.1.

However, Section 35.5.1 further provides:

"Working benefits and premium pay differentials of any type shall be allowed or paid members of the Police Department referred to herein only as is otherwise provided in this Charter."

Mr. Robert J. Dolan

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At present there is no provision authorizing any premium pay differentials for night shift work. Thus, in order to provide night differential pay it will be necessary to amend the Charter to so provide as was done to provide premium pay differential to members of the Police Department assigned to two-wheel motorcycle traffic duty. (Section 35.5.2.)

You are so advised.

Very truly yours,

EAB

THOMAS M. O'CONNOR
City Attorney

February 27, 1969

Honorable Thomas J. Cahill
Chief of Police
Hall of Justice
350 Bryant Street
San Francisco, California 94103

Re: Constitutionality of Police Department
Rules Regarding Political Activity and
Free Speech

Dear Chief Cahill:

Your letter of February 19, 1969, requests my opinion specifically regarding the constitutionality of Police Department Rules 2.113 and 2.173, which provide as follows:

"2.113 Shall not actively participate in politics relative to the election or appointment of public officials. Neither shall he take active part in such political campaigns or in soliciting votes or in levying, contributing or soliciting funds or support for the purpose of favoring or hindering the appointment or election of candidates for public office."

"2.173 Shall not adversely criticize orders, acts or measures of any department or officer of the United States, the State of California, or the city and county."

Both of these rules appear to me to be too broad and all-encompassing in their application to be considered within constitutional limitations. We learned in Kinnear v. City and County of San Francisco, 61 Cal. 2d 341, that political activities of public employees may only be restricted when pinpointed or narrowly drawn within a compelling need for such restrictions. The court indicated that politically such restrictive rules might be adopted to restrict a public employee's right to run or campaign for public office against his own superior officer, or his right to use official influence to coerce political action, or to engage in the solicitation of political contributions from fellow employees, or in pursuing political purposes during working hours, but that

Honorable Thomas J. Cahill - 2 -

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any rule which has sweeping overbreadth of application in such respects will be stricken down. Said the court:

"It is, of course, possible to draw a restrictive provision narrowly in order to deal specifically with such abuses."

In a more recent case, Bagley v. Washington Township, 65 Cal. 2d 499, 507, dealing again with the constitutional rights of public employees, the Supreme Court stated:

"The public employee surely enjoys the status of a person protected by constitutional right. Public employment does not deprive him of constitutional protection. In the absence of an imperative necessity to protect the public from irresponsible activity of so serious a nature that it would disrupt the public welfare, such protections are not subject to destruction by a public employer's insistence that they be waived by contract."

The above statement not only confirms the prior ruling of the court in Kinnear but also in Fort v. Civil Service Commission, 61 Cal. 2d 331, 337-338, in which it said:

"It must appear that restrictions imposed by a governmental entity are not broader than are required to preserve the efficiency and integrity of its public service."

There is no question but what restrictions imposed upon free speech by public employees are subject to the same strict interpretation as those regarding political activities. Our State Court of Appeal so held in the 1966 case of Belshaw v. City of Berkeley, 246 C.A. 2d 493, when it ruled that a city fireman who wrote a public letter critical of a salary distinction between beginning policemen and firemen was protected against suspension by his constitutional right to free speech. Two rules and regulations were there involved, as follows:

Personnel Rule 20, Section 2:

"Employees are required at all times to conduct themselves in such a manner as to reflect no discredit upon the City of Berkeley."

Fire Department Rule 31, Chapter 20:

Honorable Thomas J. Cahill

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February 27, 1969

"Public Criticism of Department or Superiors - They shall refrain from adverse criticism concerning the actions of any superiors and they shall not publicly express disapproval of the policies and practices of the Department."

Pertinent comment by the Court on page 497 of the opinion reads as follows:

"What was said in Fort concerning the political rights of public employees has equal application to the right of free speech, as the facts of this case demonstrate. Here a broad rule of employee conduct prohibits all criticism of superiors and prevents public expression of disapproval of the policies of respondent's department. Even if it be admitted that the comments contained in respondent's letter were in fact critical of his superiors, there is no showing here that its publication impaired or disrupted the public service. We thoroughly agree with the trial court's finding that respondent's letter is not offensive, defamatory or obscene, and that it does not urge or suggest violent or unlawful conduct on the part of anyone."

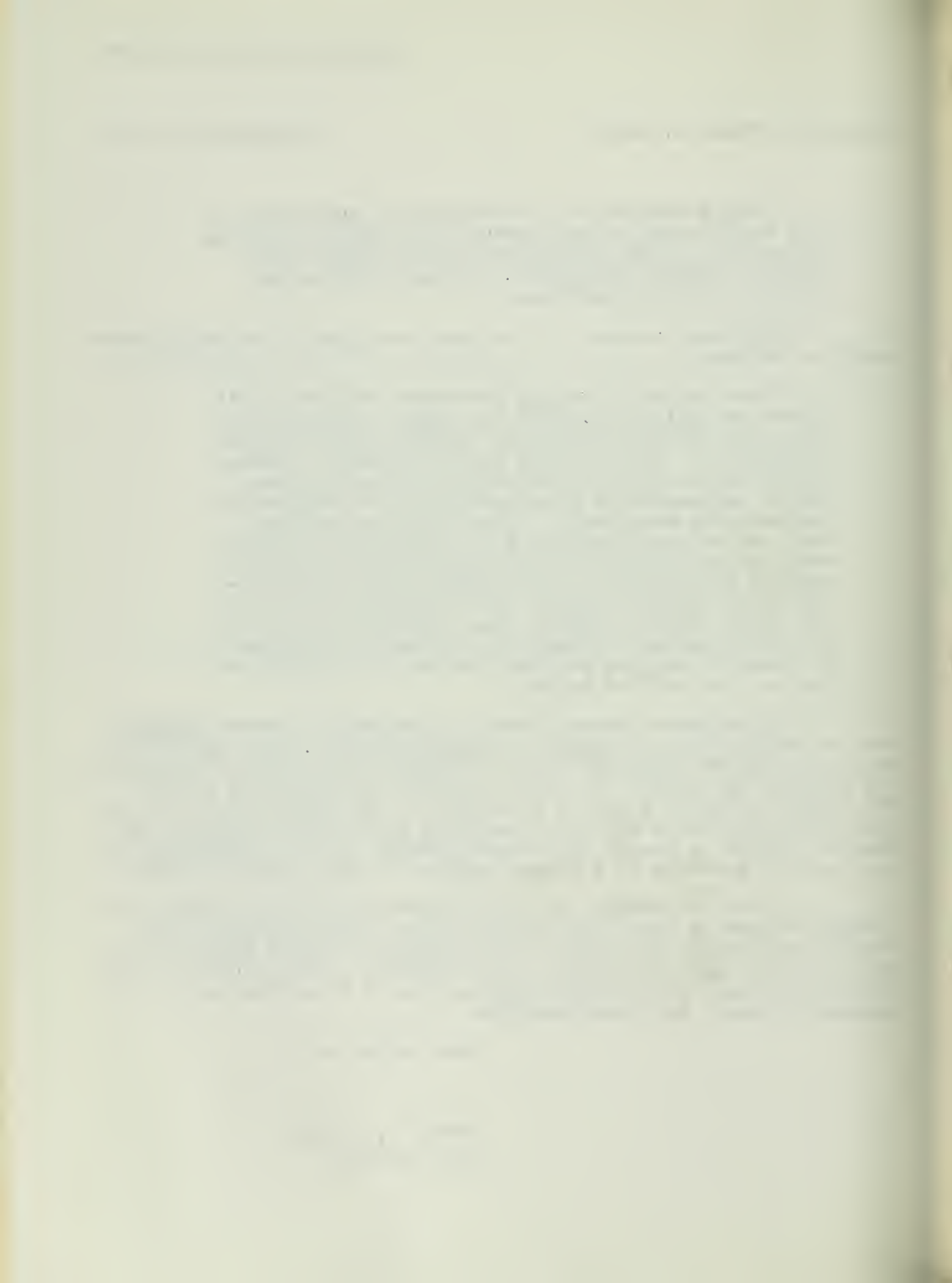
The opinion further draws a distinction between Belshaw and an earlier case of Pranger v. Break, 186 Cal. App. 2d 551, in which the public employee there had written an editorial suggesting "a sit-down or strike, or other unlawful pressures" to remedy the salary inequity which he described in his editorial. This was held obviously to be conduct unbecoming to a public employee and conduct likely to impair the administration of the public service and in that sense to be a proper subject of disciplinary action.

It is, therefore, my opinion that Rule 2.173 is far too broadly worded to stand the test of being a constitutional rule. Both it and Rule 2.113 may be restructured in such a way as to meet a proper constitutional test, according to the facts of each particular case, but in their present form I deem them to be unconstitutional and unenforceable.

Very truly yours,

RJR

THOMAS M. O'CONNOR
City Attorney



February 7, 1969

Mr. Joseph E. Tinney
Assessor
101 City Hall
San Francisco, California 94102

Re: Department of Housing and Urban Development;
Assessment No. 8-080167 (Midtown Park Apart-
ments); Tax on Personal Property of Agency
of Federal Government

Dear Mr. Tinney:

You have asked my advice concerning the tax immunity of personal property held in the name of the Federal Housing Administration located at the Midtown Park Apartments.

The case of United States of America v. County of San Diego (1966), 249 F. Supp. 321, presented this precise question of whether or not a local government can levy a tax on personal property held by an agency of the United States Government absent express congressional authorization. The holding of that case is that property held by a federal instrumentality is exempt from local taxation unless Congress affirmatively provides otherwise.

Congress has on occasion consented to the taxation of property by local federal agencies. (National Housing Act §208, 12 U.S.C.A. §1714) Consent on this occasion, however, extended only to taxation of real property and personal property used in the operation of said real property was held exempt (United States v. County of San Diego, supra).

You are therefore advised that from the date of acquisition and during the time that the subject personal property was owned or possessed by the Federal Housing Administration and used in connection with the Midtown Park project that said personal property was immune from taxation. (McCulloch v. Maryland (1819), 17 U. S. (4 Wheat.) 316, 4 L.Ed. 579; United States v. Allegheny County (1944), 322 U. S. 174, 64 S.Ct. 908, 88 L.Ed. 1209; Mayo v. United States (1943), 319 U. S. 441, 448, 63 S.Ct. 1137, 87 L.Ed. 1504; Penn Dairies v. Milk Control Comm. (1943), 318 U. S. 261, 269, 63 S.Ct. 617, 87 L.Ed. 748.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

March 3, 1969

Honorable John A. Ertola, President
Board of Supervisors
235 City Hall
San Francisco, California 94102

Re: Amendment to Section 303 of
the Housing Code

Dear Supervisor Ertola:

This is in reply to your letter of February 27, 1969, with reference to suggested amendments to section 303 of the Housing Code.

With reference to the proposed card to be shown the occupants of dwellings to be inspected, there appears to be no legal objection to the requirement of a card. It should be noted, however, that the reference in the language of the card you propose to low interest rate loans make such card applicable only to Federally Assisted Code Enforcement areas. Also the use of the words "minimum building code enforcement" could raise questions as to the scope of the inspection since the code itself sets forth the standards of code compliance. Further, since any card should be designed to apprise the occupant of a dwelling both of his rights and also his obligations, the text should include a statement concerning the issuance of a warrant upon refusal to allow the inspection if proper grounds exist for issuance of a warrant. Section 303 of the Housing Code requires a showing of proper "credentials" by the authorized employees of City departments prior to an inspection. A suitable card could be made a part of such credentials. It is my recommendation, however, that if a card is to be included as part of the credentials, the text of the card should be left to administrative determination and not be the subject of legislation.

You have suggested a paragraph to be added to section 303 entitled "Inspection Warrants--When Issued." This paragraph generally provides that where permission to enter a building has been refused, an inspection warrant will issue only upon a showing of additional evidence suggesting actual cause to inspect said dwelling. This paragraph, in my opinion, cannot be added for the

Honorable John A. Ertola

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March 3, 1969

reason that the state has preempted the field of inspection warrants by existing legislation. The state has enacted sections 1822.50 to 1822.57, inclusive, of the Code of Civil Procedure providing a detailed procedure for the issuance, execution and enforcement of inspection warrants where the owner or occupant has refused entry. This legislation provides that the warrant must be issued by a judge of a court of record upon a showing of cause. Section 1822.52 of the Code of Civil Procedure specifically provides that "cause" shall be deemed to exist if reasonable legislative or administrative standards for conducting a routine or area inspection have been enacted.

The Board of Supervisors has enacted Ordinance No. 316-68 which determines that there exists in San Francisco certain deteriorated or deteriorating areas for which a program of concentrated code enforcement may arrest the decline of the areas presently designated as Arguello Park, Buena Vista Heights, Glen Park and Great Highway. This legislation has, in my opinion, provided the cause for inspection of dwellings within the designated areas as required by section 1822.52 of the Code of Civil Procedure.

The comprehensive procedure for obtaining an inspection warrant under the Code of Civil Procedure shows that the state has fully and completely covered the field by general law with respect to obtaining a warrant in the event of refusal of entry by an owner or occupant; and the state has thus precluded municipalities from enacting legislation on this subject. (See In re Hubbard, 62 Cal. 2d 119, 122.) Accordingly, it is my opinion that the City and county cannot enact legislation which would provide a different "cause" for the right to inspect for those dwellings within an area determined by the Board of Supervisors to be in need of concentrated code enforcement. However, if the building inspectors desire to enter a building that is not within an area designated by the Board of Supervisors as in need of enforcement, then there would be no cause predetermined by the legislative body and the building inspectors would have to show independently the need of inspection based on the existence of facts giving rise to probable cause that code violations exist within the particular dwelling. Code of Civil Procedure section 1822.52 requires that "Cause shall be deemed to exist . . . or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises or vehicle." Furthermore, section 1822.53 of the Code of Civil Procedure requires that "Before issuing an inspection warrant, the judge may examine on oath the applicant and any other witness, and shall satisfy himself of the existence of grounds for granting such application."

Honorable John A. Ertola

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March 3, 1969

Mr. Justice White, who wrote the majority opinion in Camara v. Municipal Court, 37 S.Ct. 1727, recognized that an area inspection is a "reasonable" search of private property within the meaning of the Fourth Amendment and that "probable cause" to issue a warrant to inspect must exist:

" . . . if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e.g., a multi-family apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling."

As a practical matter, the city and county would be prohibited from carrying out an effective code enforcement program within a blighted area if it had to show conditions which would constitute "cause" for entry. Many violations, such as faulty wiring, cannot be discovered except by inspection and in those situations the city and county could not gain entry to discover such defects because probable cause could not be shown from physical evidence. Accordingly, it is necessary that the city make a house-to-house inspection within an area designated by the Board as blighted and in need of code enforcement in order that the public health and safety would be preserved. Mr. Justice White recognized this and for that reason concluded that the test should be one of "reasonableness." The public interest, he states, "demands that all dangerous conditions be prevented or abated, yet it is doubtful that any other canvassing technique would achieve acceptable results. Many such conditions--faulty wiring is an obvious example--are not observable from outside the building and indeed may not be apparent to the inexperienced occupant himself."

It is therefore my conclusion that the state has so fully and completely occupied the field by general laws regarding the issuance, execution and enforcement of inspection warrants that the city and county cannot legislate standards which are more restrictive as to the municipality in obtaining such an inspection warrant. Accordingly, it is my opinion that section 303 of the Housing Code should be amended merely to incorporate the state law regarding inspection warrants as follows:

Honorable John A. Ertola

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March 3, 1969

"The procedures provided by the general laws of the State of California, presently codified as sections 1822.50 to 1822.57, inclusive, of the Code of Civil Procedure, shall govern the issuance, execution and enforcement of an inspection warrant in the event the owner or occupant of a building refuses to permit an inspection thereof by an authorized employee of a city department."

Copies of sections 1822.50 to 1822.57 of the Code of Civil Procedure are enclosed for your information.

You are thus advised.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

MCK

March 19, 1969

Ellis D. Sox, M.D.
Director of Public Health
101 Grove Street
San Francisco, California 94102

Subject: Maternity Leave of Absence

Dear Doctor Sox:

This is in reply to your request that I review the directive regarding maternity leaves of absence for employees of the Department of Public Health.

The directive generally provides that (1) an employee who is pregnant must take a leave of absence three months prior to delivery and continue on leave until three months following delivery; (2) that exceptions to the rule can be made where the employee presents a statement signed by the attending physician that work beyond the sixth month of pregnancy or within three months following delivery will not be injurious to the mother or child; and (3) that deliberate concealment of the expected delivery date to avoid taking a leave of absence will subject the employee to disciplinary action.

Leaves of absence to officers and employees of the city and county shall be governed by rules established by the Civil Service Commission (Section 153, Charter). The Civil Service Commission has not enacted any rules specifically governing maternity leaves but on October 14, 1946, it made a ruling with respect to maternity leaves as follows:

- "1. Sick leave with pay will not be granted for period of absence due to pregnancy where such period of pregnancy and delivery have been normal.
- "2. Actual illness resulting from complications in connection with pregnancy will be considered as illness

Ellis D. Sox, M.D.

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March 19, 1969

under the sick leave ordinance and compensated in accordance therewith.

- "3. Sick leave without pay for periods not to exceed four months prior to delivery and three months subsequent to delivery will be approved on request when made on a properly completed sick leave without pay form.
- "4. Additional periods of leave following delivery for the purpose of taking care of the child when requested will be considered as not within the meaning of the sick leave rule but will be considered as a request for leave of absence without pay for reasons other than illness."

The Civil Service Commission, under the above quoted ruling, treats a maternity leave as a sick leave without pay except where actual illness results from complications in connection with the pregnancy. There is no provision in the Rules of the Civil Service Commission which requires an employee to take a leave of absence for maternity purposes. However, in the event that an employee is not medically or physically competent to perform his duties, an appointing officer is authorized under rule 31, section 5(c) of the Rules of the Civil Service Commission to require the employee to present medical evidence as to the employee's competency to perform his duties or in the absence of such proof, the appointing officer may place such employee on sick leave without pay or sick leave with pay if the employee has earned credits for such leave. Rule 31, section 5(c), provides in part:

"An appointing officer who has definite evidence that an employee is not medically or physically competent to perform his duties, and if allowed to continue in his employment may represent a risk to himself or to his fellow workers or to the public, may require such employee to present a medical report from his personal physician or from a Civil Service Commission examining physician certifying as to the employee's medical or physical competency to perform his duties. If the employee refuses to obtain such physician's certificate, the appointing officer may then place the employee on sick leave without pay (or sick leave with pay if the employee has sick leave with pay credits due), and shall immediately report such action to the Civil Service Commission."

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Ellis D. Sox, M.D.

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March 19, 1969

It is my opinion that you are precluded by section 153 of the Charter from enacting rules and regulations relating to leaves of absence of employees in your department. Inasmuch as the Civil Service Commission has not enacted a specific rule requiring a maternity leave, an employee who is pregnant may continue working until she requests leave of absence without pay under the provisions of rule 31 of the Rules of the Civil Service Commission. If such employee becomes ill as the result of complications of pregnancy, she would be entitled to sick leave with pay for the period of such illness, assuming such employee has earned sick leave credits. However, if you conclude that an employee is not medically or physically competent to perform her duties by reason of her pregnancy and if continued employment will be a risk to herself, to her fellow workers or to the public, you may require such employee to furnish medical proof of her medical or physical competency to continue working; and in absence of such proof, you may place her on sick leave without pay or sick leave with pay if the employee has sick leaves with pay credits due as provided by Rule 31, section 5(c) of the Rules of the Civil Service Commission.

In your letter requesting opinion you refer to Board of Education regulation with respect to mandatory maternity leave. The San Francisco Board of Education did have a rule requiring a married employee to take a leave of absence without pay at least three months prior to the anticipated birth of her child and for six months following the estimated date of birth. (Rule P 4153, Policy Manual, San Francisco Unified School District.) After extensive study of this matter by the Board of Education, this rule was amended on October 17, 1967, to require a certificated employee to take a maternity leave without pay at least two months prior to the anticipated birth of her child, and she has the option to return after one month following the date of birth; and the employee shall return not later than six months following the date of birth. Immediately following the termination of maternity leave, the employee may extend the leave of absence for not more than one school year for the care of the infant. This maternity leave provision was enacted under express authority of section 13456 of the Education Code and is applicable only to certificated employees of school districts. Thus, it has no application to the subject matter of your inquiry.

You are thus advised.

Very truly yours,

MOX

THOMAS M. O'CONNOR
City Attorney

March 5, 1969

Honorable John A. Ertola, President
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Legality of a Proposed Declaration
of City Policy That New Business
Firms Provide Assurances They Will
Pay Prevailing Wages and Be Bound
By Other Employment Practices

Dear Supervisor Ertola:

In essence, the resolution which you propose would have the effect of establishing both wage rates and working conditions for new businesses in the City and County of San Francisco. Traditionally, these aspects of operating a business are determined in the process of collective bargaining between the employer and the employee or his representatives. The wages to be paid and other conditions of employment, when agreed upon, are then formalized in a collective bargaining agreement which is a contract between the business (employer) and his employees.

As a chartered city and county, San Francisco is empowered "to make and enforce all laws and regulations in respect to municipal affairs" subject only to constitutional and charter restrictions. (Cal. Const. Art. XI, Secs. 6, 8.) Thus, if the subject herein is a "municipal affair," i.e., a matter of purely internal or local concern, San Francisco's authority to legislate on the matter is paramount and free from control of the State Legislature. On the other hand, if the subject is one of general or statewide concern, the City and County's power is limited in that such legislation may not conflict with general law.

In Professional Firefighters v. City of Los Angeles, 60 Cal.2d 276, the Supreme Court held that labor relations is a matter of statewide concern and is to be governed by general law in contravention of local regulation by chartered cities.

The question then is whether the proposed legislation conflicts with the general law. California Constitution, Article XI, Section 11, provides that "any county, city, town or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws." (Emphasis added.)

Honorable John A. Ertola

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March 3, 1969

An examination of this state's labor code indicates that there already exists legislation covering that aspect of employer (businesses) and employee relations regarding wages, hours and working conditions that your proposed resolution seeks to encompass. Section 923 (Division 2, Part 3, Chapter 1) of the California Labor Code states, in part, as follows:

"§923. Declaration of public policy. In the interpretation and application of this chapter, the public policy of this State is declared as follows:

"Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employee. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control."

In the case of Shafer v. Registered Pharmacists, 16 Cal.2d 379, the Supreme Court of the State of California held that Section 923 of the Labor Code leaves no doubt but that the Legislature had intended by its enactment to "balance the industrial equation, so far as able to do so, by placing the employer and employee on an equal basis." (Emphasis added.)

A reasonable interpretation of Section 923 of the Labor Code would indicate that the State Legislature fully intended to occupy this area of labor relations in question. It is well settled law in California that where a local ordinance or regulation conflicts with the general law in an area intended to be covered by the general law, that the local ordinance or regulation is invalid.

It is my opinion that there already exists state legislation in the area which your resolution and ordinances would encompass. In California the "general policy" with regard to labor relations as stated in Section 923 of the Labor Code is that "terms and conditions of labor should result from voluntary agreement between the employer and employee." Your resolution and enforcing ordinances would impose these conditions upon the employer to the extent that he must meet prevailing rates and working conditions before being allowed to do business in San Francisco.

Since there already exists legislation covering these circumstances and since the ordinances you would propose to implement your resolution would be contrary to the expressed provisions of Section 923 of the California Labor Code, it is my opinion that such ordinances would be invalid.

Yours very truly,

MHM/JJS

THOMAS M. O'CONNOR
City Attorney

March 26, 1969

Civil Service Commission
151 City Hall
San Francisco, California 94102

Attention: Mr. Harry Albert

Subject: Sick Leave Rule - Police Department

Gentlemen:

This refers to your request for an opinion as follows:

"Rule 32 - 'Sick Leave With Pay' of the Civil Service Commission was revised, effective January 1, 1969. The prior rule, Section 4, provided that employees were ' . . . entitled to an accumulation of two weeks sick leave with pay for each year of service . . . ' not to exceed the six month charter limitation. Under the current revised rule (Section 3.1), the provision is ' . . . permanent employees shall be credited with earning 12 working days of paid sick leave per completed year of paid service.'

"Under the former rule, the uniformed members of the police force, as a matter of long standing practice, were recorded for sick leave purposes on a calendar week basis. They were credited with earning 14 calendar days a year, and when sick leave was used, they were charged on the basis of 14 calendar days per year. Under this method, 182 calendar days were equivalent to the maximum accumulation of six calendar months.

"With the adoption of the revised Rule 32, and the provision above quoted, the uniformed members of

Civil Service Commission

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March 26, 1969

the Police Department are credited with 12 working days for each completed year of paid service and when sick leave is used, such sick leave is charged on a working day basis i.e., 5 work days per week. Under this method of calculation, 130 working days would be equivalent to six calendar months.

" * * *

"In this case, is the Civil Service Commission within its authority to adjust sick leave credits earned by uniformed members of the Police Department prior to January 1, 1969. Such adjustment would be calculated on the basis that a maximum of 182 calendar days (prior to January 1, 1969) is equivalent to the current maximum of 130 days, and lesser amounts of credited sick leave would be adjusted accordingly."

The fundamental basis upon which sick leave is granted to the employees of the City and County of San Francisco, and the extent to which it may be accumulated, is provided by Section 153 of the Charter which reads in part as follows:

"The civil service commission by rule shall provide for leaves of absence, due to illness or disability, which leave or leaves may be cumulative, if not used as authorized, provided that the accumulated unused period of sick leave shall not exceed six (6) months, regardless of length of service, . . ."

There is no question in light of the provisions of Section 153 of the Charter that no matter what the method for the recording of accumulated sick leave under the new Civil Service rule, the maximum accumulation shall not exceed six (6) months. A policeman who on January 1, 1969 had accumulated 182 days of sick leave is not entitled to any more than six months.

Similarly, the method of recording sick leave accumulation prior to January 1, 1969, no matter how long it has been in effect, cannot affect the application of the six months limitation on sick leave accumulation.

The legal question involved in your request is one of construction. What was the intent of the Civil Service Commission in passing, and the Board of Supervisors in approving, the new rule 32 of the Rules and Regulations of the Civil Service Commission? For the purpose of this request, the legal question is

Civil Service Commission

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March 26, 1969

narrower yet. Was it the intent of the Civil Service Commission in passing and the Board of Supervisors in approving the new rule 32 to affect in any way the sick leave already accumulated by and credited to the members of the Uniformed Police Department? There is nothing in the new rule by which an intent could be construed to either increase or diminish the sick leave accumulated prior to January 1, 1969. The rule can only be construed as prospective and in no way retroactive. The rule states that beginning with January 1, 1969 permanent employees shall be credited with earning twelve (12) working days of paid sick leave per completed year of service. There is nothing in the wording of the new rule which would indicate an intent to in any way affect sick leave acquired before the effective date of the new rule.

In adopting bookkeeping methods pursuant to the new rule 32, and in adjusting past bookkeeping methods to conform to the new rule, the Civil Service Commission is limited to a method which will neither increase nor diminish the sick leave already accumulated prior to January 1, 1969. The adjustment which you suggest, namely on the basis that a maximum of 182 calendar days prior to January 1, 1969 is equivalent to the current maximum of 130 days, and that lesser amounts of credited sick leave would be adjusted accordingly, is acceptable under the above criterion if, in its application to particular situations, it neither increases nor diminishes such leave accumulated prior to January 1, 1969.

You are thus advised.

Very truly yours,

EJN

THOMAS M. O'CONNOR
City Attorney

April 1, 1969

Mr. Norman C. Ecklund
Director of Recruitment and Examinations
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Residency Requirements for Journey-
man Building Trade Positions

Dear Mr. Ecklund:

This is in reply to your request for an opinion concerning a possible conflict between the residency ordinance and the Civil Service Commission requirement that applicants for the crafts maintain current San Francisco residency.

Section 7 of the Charter of the City and County of San Francisco entitled "Qualifications of Officers and Employees" states:

"Except for those offices and positions and officers and employees specifically provided for in this section and other sections of the charter, the residential qualifications and requirements for all officers and employees and all offices and positions in the city and county service shall be as provided by ordinance of the board of supervisors."
(Emphasis added.)

Section 141 of the Charter entitled "Powers and Duties" sets forth the powers and duties of the Civil Service Commission. It provides in part:

"The commission shall adopt rules to carry out the civil service provisions of this charter and, except as otherwise provided in this charter, such rules shall govern applications; examinations; . . . and such other matters as are not in conflict with this charter." (Emphasis added.)

Mr. Norman C. Ecklund

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April 1, 1969

The Board of Supervisors has passed an ordinance covering the residency requirements of applicants for building trade positions.

Section 16.98 of the San Francisco Administrative Code entitled "Requirements for Persons Entering Service" reads, in part, as follows:

"Except as otherwise provided in the charter or statutes of the state, the residence requirements of applicants for appointment to offices or employment shall be as follows:

"(a) . . .

"(b) OTHERS. For all other employment residence requirements shall be as follows:

" . . .

"(3) Building Trades Classifications. Applications for journeyman building trades positions located in the city and county must be current residents at the time of filing application." (Emphasis added.)

Since the date of filing an application for employment and the date of actual employment in a civil service system are almost always separate occasions, it is reasonable to assume that the Board of Supervisors intended, when they passed Section 16.98 of the Administrative Code, that the residency requirement for employment in the building trades was to apply to the applicant only at the time of filing the application.

It is my opinion that Civil Service examination announcements (scope-circulars) which state that the applicant must be a resident of the City and County of San Francisco both at the time of filing the application and at the time of actual employment are in conflict with the Charter and the Administrative Code.

Section 7 of the Charter expressly grants to the Board of Supervisors the power to provide residential qualifications for employees "except those specifically provided for in this section." The building trades positions are not specifically mentioned, so they would be covered by this provision.

Section 141 of the Charter states that the Civil Service Commission may adopt such rules "as are not in conflict with this charter."

Mr. Norman C. Ecklund

- 3 -

April 1, 1969

The "scope-circulars" have the effect of creating an additional residency requirement for applicants in the building trades. This is contrary to Section 141 of the Charter in that it is a "rule" which is "in conflict with the charter."

Specifically, it conflicts with Section 7 of the Charter which states that the residency requirements in question shall be determined by the Board of Supervisors who have, by virtue of Section 16.98 of the Administrative Code, provided such requirements.

It is my opinion that the Civil Service Commission lacks the authority to enact additional residency requirements for applicants in the building trades and that such applicants need only be residents of the City and County of San Francisco at the time of filing applications for employment.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

MHM

March 18, 1969

Mr. Nathan B. Cooper
Controller
109 City Hall
San Francisco, California

Re: Transport Workers Union Trust Fund;
Payment of Health Service System and
Retirement System Charges; Charter
Sections 151.3.1, 164, 165.2-H(2),
172.1.12, Subd. 4; Ordinance 243-68;
Administrative Code Section 16.54;
and Civil Service Rule 55

Dear Mr. Cooper:

Your letter of November 12 poses a question for legal analysis in the following language:

"A proposal of the above captioned Railway Trust Fund board is that in lieu of the Controller deducting Health Service System charges from employees wages that the Trust Fund make such payments. The possibility of a like in lieu payment being made for Retirement System contributions exists.

"May the Controller legally refrain from making the deductions in favor of the in lieu substitutions."

CONCLUSION

Neither in the case of the health service system or the retirement system may the Controller refrain from making the deductions in favor of the in lieu substitutions.

In the case of the health service system it would be legal to substitute for the payroll deduction of health service system charges a deduction from the periodic payments to the Trust Fund. In the case of the retirement system such a substitution for payroll deductions by a deduction from the periodic payments to the Trust Fund would be in violation of the Charter.

Mr. Nathan B. Cooper

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March 18, 1969

DISCUSSION

A. Health Service System Charges

Referring to the amount to be paid monthly by members of the Health Service System, Charter Section 172.1.12 states:

" . . . The controller shall deduct said sums from the compensation of the members and shall deposit the same with the treasurer of the city and county to the credit of the health service system fund."

Charter Section 151.3.1, adopted by the people in November 1967 and approved by the Legislature in January 1968, with respect to the fixing of conditions and benefits of employment other than wages as compensation for carmen, states:

" . . . The board of supervisors may establish such conditions and benefits notwithstanding other provisions or limitations of this charter, with the exception that such conditions and benefits shall not involve any change in the administration of, or benefits of the retirement system, health service system or vacation allowances as provided elsewhere in this charter. . . . Provided, that when in the two systems used for certification as provided above, vacation, retirement and health service benefits are greater than such similar benefits provided by this charter for platform employees, coach or bus operators of the municipal railway, then an amount not to exceed the difference of such benefits may be converted to dollar values and the amount equivalent to these dollar values shall be paid into a fund. The fund shall be established to receive and to administer said amounts representing the differences in values of the vacation, retirement and health service benefits, and to pay out benefits that shall be jointly determined by representatives of the city and county government and the representatives of the organized platform employees and coach and bus operators of the municipal railway . . . "

For the fiscal year 1968-1969 the differences in values of the vacation, retirement and health service benefits have been set by the Board of Supervisors at \$1,852,393 (Ordinance 243-68, sec. 8.67.2) as payable to the Transport Workers Union San Francisco Municipal Railway Trust Fund (hereinafter referred to as "Trust Fund").

Mr. Nathan B. Cooper

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March 18, 1969

In construing Charter Section 172.1.12 it must be recalled that it was enacted some time previous to the 1967 amendment found in Charter Section 151.3.1, and whatever the intent of the framers of Section 172.1.12, it cannot be said that they foresaw the later adoption of Charter Section 151.3.1.

On the issue of interpretation, the general objective of the statutory provisions is a prime consideration. Thus, Charter Sections 172.1.12 and 151.3.1 are to be construed with a view to promoting rather than defeating their general purpose. (Redevelopment Agency v. Malaki (1963), 216 C.A. 2d 480, 487.)

The substantive content of Charter Section 172.1.12 requires that the employees' contribution toward the costs of the health service system be withheld by the Controller for credit to the health service system fund. This system ensures that the health service system, with the payroll-deduction certainty of collection, can operate on a cash basis and without the added administrative cost that would be incurred in reliance on a voluntary payment system with its attendant difficulties with individual payments, overpayments, arrearages, and delinquencies. It also ensures that, whatever else might befall a covered city employee in the way of living or other expenses or debts, that his health or medical care coverage through the health service system is paid for. To change the system so that the health service charges are not withheld at the source, but are paid by a third party pursuant to agreement, would be a violation of Charter Section 172.1.12. Thus, you may not legally refrain from making the deductions in favor of the in-lieu substitutions.

There is, however, a way that the Trust Fund board and the Controller can accomplish the end sought to be attained which would not be in violation of Charter Section 172.1.12. Thus, if the Controller withheld and deducted from the periodic payment to the Trust Fund the amount of money that would equal the amount that would be otherwise withheld and deducted from the pay warrants of individual carmen for transmittal to the treasurer to the credit of the Health Service System, the substantive requirements of the charter would be met.

The literal wording of Charter Section 172.1.12 is directory in nature and does not preclude the alternative suggested, for it has been held that provisions are directory when they relate to some immaterial matter not of the essence of the thing to be done, and where a departure from the statute will cause no injury to any person affected by it. (Derby v. City of Modesto (1894), 104 Cal. 515; and see People v. Butler (1912), 20 C.A. 379; Crane v. Board (1936), 17 C.A. 2d 360; and Fairfield Suisun S. D. v. Hutcheon (1956) 139 C.A. 2d 502.)

Mr. Nathan B. Cooper

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Crane v. Board, supra, states:

"It is of course difficult to lay down a general rule to determine in all cases when the provisions of a statute are merely directory and when mandatory or imperative, but of all the rules mentioned, the test most satisfactory and conclusive is, whether the prescribed mode of action is of the essence of the thing to be accomplished, or, in other words, whether it relates to matter material or immaterial--to matter of convenience or of substance."

The withholding of health service system charges by the Controller and transfer of the resulting credit to the system is a matter of substance. Whether it is withheld from individual pay warrants or from other funds in custody of the Controller is a matter of convenience. Moreover, the "other funds" in the custody of the Controller in this instance are in the nature of "compensation" inasmuch as they represent the difference in value of carmen's vacation, retirement, and health service benefits in the controlling collective bargaining agreement and the values of the San Francisco equivalent (Charter Sec. 151.3.1(f)). That section provides that the Trust Fund shall pay out benefits to be determined by representatives of the city and of the organized platform men. For them to agree to pay the health service system charges that would otherwise be deducted from individual pay warrants by deduction from sums due the Trust Fund appears to be in keeping with the intent of the 1967 Charter Amendment that the Trust Fund provide benefits out of the moneys paid to it by the city.

B. Retirement System Charges

Existing charter language does not allow as much scope for applying rules of construction as in the case of the health service provisions.

Charter Section 165.2 provides, in part:

"(A) The following words and phrases as used in this section unless a different meaning is plainly required by the context, shall have the following meaning: . . .

"'Compensation,' as distinguished from benefits under the workmen's compensation laws of the State of California shall mean all remuneration whether in cash or by other allowances made by the city and county, for service qualifying for credit under this section, . . ."

Mr. Nathan B. Cooper

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March 18, 1969

"(M) All payments provided under this section shall be made from funds derived from the following sources, plus interest earned on said funds: . . .

"(2) There shall be deducted from each payment of compensation made to a member under this section, a sum determined by applying the member's rate of contribution to such compensation. . . . The sum so deducted shall be paid forthwith to the retirement system. Said contribution shall be credited to the individual account of the member from whose salary it was deducted, . . ."

Charter Section 151.3.1(f) provides, in part:

"For all purposes of the retirement system as related to this section, the word 'compensation' as used in section 165.2 of this charter shall mean the 'wage schedules' as fixed in accordance with paragraphs (a) and (b) above, including those differentials established and paid as part of wages to platform employees and coach and bus operators of the municipal railway, but shall not include the value of those benefits paid into the fund established as herein provided." (Emphasis added.)

These excerpts say that from each payment of remuneration whether in cash or other allowances, except for workmen's compensation payments and the value of the benefits paid into the trust fund, made by the city and county to a member of the retirement system there shall be deducted a sum determined by applying the member's rate of contribution to the amount of the remuneration. A distinction between the substantive and adjectival, or mandatory and directory, aspects of a statute may not be drawn where the result would be to render the statute ineffective and meaningless. (Pulcifer v. County of Alameda (1946), 29 C. 2d 258; and Carter v. Seaboard Finance Co. (1949), 33 C. 2d 564.)

The quoted sections relating to retirement, as distinguished from the sections relating to health service, are quite precise in their definition of compensation. As indicated above, Charter Section 151.3.1 specifically excludes from "compensation" "the value of those benefits paid into the fund established as herein provided." The fact that the retirement charge is to be deducted "from each payment of compensation made to a member" precludes an agreement for payment of retirement system contributions by the Trust Fund, nor can you deduct the retirement contribution from amounts due the Trust Fund, as distinguished from compensation due the members.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

March 18, 1969

Civil Service Commission
151 City Hall
San Francisco, California

Subject: Eligibility of Disability
Transferee to Participate
in Promotional Examination

Gentlemen:

This is in answer to your inquiry of March 13, 1969, in which you request an opinion relative to the rights of a disability transferee under Section 156.2 of the Charter. The employee involved was originally an M-108 Blacksmith and on a disability transfer became a B222 General Clerk on September 8, 1952. Subsequently, he received a disability transfer to a position as a 1406 Senior Clerk, and on November 1, 1967, received a further transfer to class 1403 Elections Clerk. You state that in each instance it was necessary for the employee to revert to his original base class of M-108 Blacksmith in order to transfer for disability to another class.

The Charter was amended in June 1968 to add Section 156.2, as follows:

"Notwithstanding any of the provisions of Section 156 or any other provisions of this Charter, whenever any employee is transferred under the provisions of Section 156 of this Charter and has held such position for ten (10) years, he shall be eligible to participate in any promotional examination in which his classification is designated as the next lower rank from which promotion will be made; provided that the disability of said employee is not of such nature as to interfere with the performance of the duties required in the promotive classification. The civil service commission shall make such determination after examination of the employee by a civil service examining physician.

"The salary of an employee who is promoted as the result of participation in a promotional examination

Civil Service Commission

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March 18, 1969

under the provisions of this section shall be fixed in accordance with the salary standardization provisions of this charter."

Your specific question is whether or not the employee involved now qualifies to take a promotional examination.

Section 156.2, supra, refers to an employee transferred under the provisions of Charter Section 156 and holding "such position" for ten years. Charter Section 156 provides the employee may be transferred to a "position within his capacities to perform" and not having a higher compensation schedule. The words "such position" as used in Section 156.2 appear to mean "a position within his capacities to perform."

I am of the opinion that a disability transferee need only show that he has held a position as a disability transferee for ten years in order to qualify under Section 156.2 for promotional examination. He need not be in the same classification for ten years.

The employee mentioned in your letter became a disability transferee in 1952 and has held "such position" for ten years. He meets the requirements of Charter Section 156.2 and if he is otherwise eligible he may participate in a promotional examination.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

TAT

March 20, 1969

Honorable Terry Francois, Chairman
Fire, Safety and Police Committee
Board of Supervisors
235 City Hall
San Francisco, California

Subject: Powers of Board of Supervisors in
Fixing or Modifying Rates to be
Charged by Taxicabs

Dear Supervisor Francois:

This is in response to your letter of March 20, 1969, wherein, after pointing out that the undisputed facts presented to your Committee at its meeting of March 18, 1969, indicate that the Yellow Cab Company will suffer a \$140,000 net loss for the current year if required to operate at the rates now in effect, you ask whether there is any legal requirement that the Board of Supervisors, acting as a rate fixing body, fix rates which will allow a reasonable return on the investment subject to such rate fixing powers, or may the Board ignore the financial consequences of its action in fixing such rates.

The power of the Board of Supervisors to regulate taxicabs and to fix the rates thereof derives from Section 11 of Article XI of the State Constitution which provides that "Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws." (In re Martinez, 22 Cal. 2d 259.)

While the police power has been described as one of the least limitable of governmental powers (Clemons v. Los Angeles, 36 Cal.2d 95, 102), it is limited by the due process clause of the 14th Amendment and the exercise of the power may not be unreasonable or arbitrary. (Ex parte Whitwell, 98 Cal. 73; Jones v. Los Angeles, 211 Cal. 304.)

With respect to the subject of your inquiry herein, i.e., the limitations on the power of the Board of Supervisors in fixing taxicab rates, I am unable to find any reported decisions

Honorable Terry Francois

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March 20, 1969

relating thereto. However, by way of analogy, I find a plethora of cases dealing with limitations upon the power of a rate-making body operating in the public utility field.

It is well established in utility law that the power of a governmental agency to fix and enforce reasonable rates to be paid public utility corporations for the services rendered by said companies does not include the right to fix rates which are so low as to be confiscatory of the property of said corporation (Southern Iowa Electric Co. v. Chariton, 255 U.S. 539, 41 S.Ct. 400, 65 L.Ed. 764; see also Bluefield Waterworks & Improv. Co. v. Public Service Commission, 262 U.S. 679, 43 S.Ct. 375, 67 L.Ed. 1173; United R. & E. Co. v. West, 280 U.S. 234, 50 S.Ct. 123, 74 L.Ed. 390; West v. Chesapeake & P. Teleph. Co., 295 U.S. 662, 55 S.Ct. 894, 79 L.Ed. 1640; Lincoln Gas & Electric Light Co. v. Lincoln, 223 U.S. 349, 32 S.Ct. 271, 56 L.Ed. 436; Board of Pub. Utility Comrs. v. New York Teleph. Co., 271 U.S. 23, 46 S.Ct. 363, 70 L.Ed. 808), and this same principle has been recognized in numerous California cases. (Miller v. Railroad Commission, 9 Cal.2d 190; Contra Costa Water Co. v. Oakland, 159 Cal. 323; Lyon & Hoag v. Railroad Com., 183 Cal. 145; San Joaquin L. & P. Corp. v. Railroad Com., 175 Cal. 74; Spring Valley Water Works v. San Francisco, 82 Cal. 286.)

It has further been held that resort may be had to the courts for relief against legislation establishing a tariff of rates which is so unreasonable as practically to destroy the value of the property employed therein. (Covington & L. Turnp. Road Co. v. Sandford, 164 U.S. 578, 17 S.Ct. 198, 41 L.Ed. 560; Spring Valley Water Works v. San Francisco, supra.)

Accordingly, in the light of the foregoing, it is my opinion that, in the exercise of its police power in establishing or modifying taxicab rates, the Board of Supervisors is legally required to fix such rates so as to allow a reasonable return to persons affected thereby and that, in a proper case, failure of the Board to do so, would render the legislation subject to legal attack as violative of the constitutional guarantee of due process.

Very truly yours,

JJS

THOMAS M. O'CONNOR
City Attorney

March 24, 1969

Mr. Elmo E. Ferrari, President
The Police Commission
850 Bryant Street
San Francisco, California 94103

Attention: Sgt. William J. McCarthy
Secretary

Subject: Police Commission -
Disciplinary Hearings

Dear Mr. Ferrari:

This is in response to your letter of March 18, 1969, in which you inquire into the jurisdiction of the Police Commission in connection with disciplinary hearings for members of the Police Department. In the matter now before you an investigation has been conducted at the direction of the Chief of Police relative to accusations of misconduct made against police officers and at the conclusion of the investigation the investigating officers have not recommended the filing of charges and the Chief of Police has neither recommended nor directed the filing of charges against the officers so accused. The members of the Police Commission have read the complete investigation file in the matter.

You specifically ask whether the Police Commission, since they have read the investigation file, is now precluded from directing that charges be filed against the officers and then hearing said charges.

Section 155 of the Charter provides as follows:

'Members of the fire or the police department guilty of any offense or violation of the rules and regulations of their respective departments, shall be liable to be punished by reprimand, or by fine not exceeding one month's salary for any offense, or by suspension for not to exceed three months, or by dismissal, after trial and hearing by the commissioners of their respective departments; provided,

Mr. Elmo E. Ferrari

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March 24, 1969

however, that the chief of each respective department for disciplinary purposes may suspend a member for a period not to exceed ten days for violation of the rules and regulations of his department. Any member so suspended shall have the right to appeal such suspension to the fire commission or to the police commission, as the case may be, and have a trial and hearing on such suspension. Written notice of appeal must be filed within 10 days after such suspension and the hearing of said appeal must be held within 30 days after the filing of said notice of appeal. If the commission shall reverse or alter the finding of the chief, it shall in the case of a reversal and in other cases it may in its discretion, order that the member affected be paid salary for the time of his suspension. In the event the chief should exercise such power of suspension, the member involved shall not be subject to any further disciplinary action for the same offense.

"Subject to the foregoing members of either department shall not be subject to dismissal, nor to punishment for any breach of duty or misconduct, except for cause, nor until after a fair and impartial trial before the commissioners of their respective departments, upon a verified complaint filed with such commission setting forth specifically the acts complained of, and after such reasonable notice to them as to time and place of hearings as such commission may, by rule, prescribe. The accused shall be entitled, upon hearing, to appear personally and by counsel; to have a public trial, and to secure and enforce, free of expense, the attendance of all witnesses necessary for his defense."

This question was the subject of City Attorney's Opinion No. 1058-A, dated March 15, 1956, a copy of which is attached. That opinion points out that the fundamental rule is to the effect that no one may sit as a judge in a judicial or quasi judicial hearing or tribunal if that person, by reason of interest, bias or prejudice, or by reason of having prejudged the pending matter, has, in the eyes of the law, caused his own disqualification to adjudicate the issues before him. The opinion further points out that an exception to this rule of law is an exception known as the "rule of necessity." The rule of necessity provides that a judge or an officer exercising judicial functions may act in a proceeding wherein he is disqualified by interest, relationship, or the like, if his jurisdiction is exclusive and there is no legal provision

March 26, 1969

Mr. Robert J. Dolan
Clerk of the Board
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Proposed Legislation Requiring Posting
of Deposit to Defray Expenses of a
Demonstration or March

Dear Mr. Dolan:

In response to your March 7, 1969 letter inquiring as to the constitutionality of legislation to provide for posting of a deposit to defray any expense sustained by the City as a result of a march or demonstration, you are advised that the question is too general and indefinite for categorical answer.

It is not indicated in the correspondence attached to your letter what the nature of the municipal expenses are that would be recouped from the deposit. However, assuming the deposit would be in the nature of a regulatory fee to cover the cost of regulation, it may be stated as a general principle that if the type of march or demonstration is one that may be constitutionally regulated by the City and County under its police power and a regulatory ordinance is adopted, then a fee to cover the cost of regulation may be exacted. (See Cox v. State of New Hampshire (1941), 312 U.S. 569; 85 L.Ed. 1049.)

For example, Article IV of the Police Code regulates processions and parades by requiring written notice to the Chief of Police of the time and route thereof not less than 24 hours prior thereto and the Chief of Police has the power to designate the street or streets the procession or parade can occupy. A permit is required for a parade in the central traffic district. The article also empowers the Chief of Police to establish lines on both sides of the parade route and when so established vehicles are prohibited from passing through such lines. Obviously, this type of march or demonstration and the regulation thereof

Mr. Robert J. Dolan

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March 26, 1969

in the manner outlined requires special public services for which a regulatory fee could be exacted. As stated in the case of Cox v. State of New Hampshire, supra, at page 1054:

"If a municipality has authority to control the use of its public streets for parades or processions, as it undoubtedly has, it cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation to the other proper uses of the streets. We find it impossible to say that the limited authority conferred by the licensing provisions of the statute in question as thus construed by the state court contravened any constitutional right.

"There remains the question of license fees which, as the court said, had a permissible range from \$300 to a nominal amount. The court construed the Act as requiring 'a reasonable fixing of the amount of the fee.' 'The charge,' said the court, 'for a circus parade or a celebration procession of length, each drawing crowds of observers, would take into account the greater public expense of policing the spectacle, compared with the slight expense of a less expansive and attractive parade or procession, to which the charge would be adjusted.' The fee was held to be 'not a revenue tax, but one to meet the expense incident to the administration of the Act and to the maintenance of public order in the matter licensed.' There is nothing contrary to the Constitution in the charge of a fee limited to the purpose stated. The suggestion that a flat fee should have been charged fails to take into account of the difficulty of framing a fair schedule to meet all circumstances, and we perceive no constitutional ground for denying to local governments that flexibility of adjustment of fees which in the light of varying conditions would tend to conserve rather than impair the liberty sought."

As to the regulation of other types of demonstrations and marches and the exaction of a fee therefor, the legal answer depends on the nature and purpose of the demonstration or march, especially on its proposed use of public facilities and its need for special public services. If you wish to particularize in this connection, I shall be pleased to advise you further on the subject.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

March 28, 1969

Mr. Howard Freeman
Juvenile Justice Commission
Youth Guidance Center
375 Woodside Avenue
San Francisco, California 94127

Subject: Duties of Juvenile Justice Commission;
Summary of Brown Act; Appointing Authority
for Acting Chief Juvenile Probation Officer

Dear Mr. Freeman:

You have made various inquiries regarding the duties of the Juvenile Justice Commission, of which you are Chairman, the Brown Act, and the appointment of an Acting Chief Juvenile Probation Officer.

Duties of Juvenile Justice Commission

The Juvenile Justice Commission was created pursuant to state law. (Section 525, Welfare and Institutions Code.) Its members are officers of the City and County of San Francisco, although its powers and duties are fixed by state law. (Charter Sections 4 and 58.)

The Juvenile Justice Commission has the duty of annually electing a Chairman and Vice-Chairman. (Section 528, Welfare and Institutions Code.)

Section 529 of the Welfare and Institutions Code provides that:

"Duty of commission; access to publicly administered institutions; subpoenas; inspection of jail; report. It shall be the duty of a juvenile justice commission to inquire into the administration of the juvenile court law in the county or region in which the commission serves. For this purpose the commission shall have access to all publicly administered

Mr. Howard Freeman

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March 28, 1969

institutions authorized or whose use is authorized by this chapter situated in the county or region, shall inspect such institutions no less frequently than once a year, and may hold hearings. A judge of the juvenile court shall have the power to issue subpoenas requiring attendance and testimony or witnesses and production of papers at hearings of the commission.

"A juvenile justice commission shall annually inspect any jail or lockup within the county which in the preceding calendar year was used for confinement of more than 24 hours of any minor under the age of 18 years. It shall report the results of such inspection together with its recommendations based thereon, in writing, to the juvenile court and to the Youth Authority."

The Juvenile Justice Commission may also make recommendations regarding any changes it deems should be made in the area of Juvenile Court law, and such recommendations may be publicized. (Section 530, Welf. & Inst. Code.)

The Brown Act

You have asked for a general explanation of the provisions of the Brown Act. In the following few paragraphs I have set forth some of the major provisions of that Act.

The Ralph M. Brown Act (otherwise known as the Secret Meeting Law, Government Code Sections 54950-54960, inclusive) provides in general that all meetings of the legislative body of a local agency, including the legislative body of school districts, chartered cities and municipal corporations (Section 54951), shall be open and public.

Section 54952 defines the "legislative body" of a local agency to include any board or commission of the governing body. Section 54952.5, added in 1961, extended the definition of "legislative body" so as to include all permanent boards or commissions of a local agency. Section 54952.3, added in 1968, further extended the definition of "legislative body" so as to include advisory commission, advisory committee or advisory body of a local agency. Accordingly, the Juvenile Justice Commission, as a permanent Commission of the City and County of San Francisco, is subject to the provisions of the Brown Act. (See Charter Sections 4 and 58, and Welf. & Inst. Code Section 525.)

Mr. Howard Freeman

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March 28, 1969

Section 54950 declares the policy of the Act and is quoted below for your information:

"Declaration, intent; sovereignty. In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and other public agencies of this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

Section 54953 provides that "all meetings of the legislative body of a local agency shall be open and public . . ." The Attorney General has rendered an opinion that the requirement contained in Section 54953 does not apply to special committees or subcommittees of local agencies which consist of less than a quorum of the members of the legislative body that have created them. (See Ops. Atty. Gen. 240.)

A specified exception to the requirement of Section 54953 is found in Section 54957 which relates to executive sessions for personnel matters. Specifically, Section 54957 provides for closed sessions to consider the appointment, employment or dismissal of a public officer or employee, or to hear complaints or charges brought against such officer or employee by another public officer, person or employee, unless such officer or employee requests a public hearing. The employee has no right to require a closed meeting. Unless the employee has asked for a public meeting, the discretion lies with the legislative body of a local agency as to whether the hearing shall be public or private. (Cozzolino v. City of Fontana (1955), 136 C.A.2d 608; 46 Ops. Atty. Gen. 34 (1965).)

Although not so stated as an exception in the Brown Act, the attorney-client privilege provided for in Evidence Code Sections 950 through 962 is a well-established limitation upon the application of the Brown Act. Public agencies are at all times entitled to the attorney-client privilege, regardless of

Mr. Howard Freeman

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March 28, 1969

whether there is pending litigation. (Sacramento Newspaper Guild v. Sacramento County Board of Supervisors (1968), 69 Cal.Rptr. 480.) However, it must be remembered that the attorney-client privilege, as an exception to the public meeting requirement of the Brown Act, is limited in that it cannot be invoked where the client's communication is not actually confidential. Its use must be strictly limited to instances where the communication is between the attorney and the legislative body and is actually meant to be confidential.

Under Section 54959, each member who attends a meeting where action is taken in violation of any provision of the Brown Act, with knowledge of the violation, is guilty of a misdemeanor.

Under Section 54960, mandamus and injunction are available to all interested persons for the purpose of enabling them to stop or prevent violations or threatened violations of the Brown Act.

You have also made inquiry as to the effect of the Brown Act on luncheon meetings. Any meeting of the legislative body of a local agency must conform to the requirements of the Brown Act, subject to the sole exception contained in Section 54957 as discussed above. In 43 Ops. Atty. Gen. 36, the Attorney General directed himself to the problem of luncheon meetings held by one or more city councils with civic organizations for the purpose of discussing municipal problems. The Attorney General concluded that the Brown Act governed such regularly held luncheon meetings and then went on to state that "This conclusion should not be construed as holding that mere attendance by a majority of the members of a city council or other local agency governing body at luncheons or dinners such as are frequently given by civic or fraternal organizations would constitute a meeting of the local agency subject to the Ralph M. Brown Act."

Acting Chief Juvenile Probation Officer

You have inquired as to the appointing authority for an acting Chief Juvenile Probation Officer. The situation you envision is that of the retirement of the present Chief Juvenile Probation Officer on April 30, 1969, without the appointment being made of a permanent replacement.

"There can be no appointment of an officer or employee in the public service without legal authority, express or implied,

Mr. Howard Freeman

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March 28, 1969

to make the appointment." (3 McQuillin Sec. 12.70, p. 308; see MacLeod v. Long, 110 Cal.App. 334.)

Section 58 of the Charter of the City and County of San Francisco was amended at the last General Election to provide that a majority of the superior court judges of the City and County of San Francisco shall appoint the Chief Probation Officer of the Juvenile Court.

Thus, the right to appoint the Chief Juvenile Probation Officer clearly appears in the Charter, without the existence of any limiting language as to the nature of the appointment being permanent or temporary. Accordingly, I am of the opinion that the legal authority for the appointment of the Chief Juvenile Probation Officer, either on a permanent or temporary basis, rests exclusively with the majority of the Superior Court judges of the City and County of San Francisco.

Very truly yours,

GEK

THOMAS M. O'CONNOR
City Attorney

April 1, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Proposed Legislation Requiring
Wearing of Footgear

Dear Mr. Dolan:

This is in reply to your letter requesting that I comment on the legality of proposed legislation requiring people to wear shoes or other protective footgear on the public streets. The request is in response to a communication which the Fire, Safety and Police Committee received regarding the subject.

The protection of the health and welfare of its citizens is a legitimate exercise of police powers granted to cities and counties under the provisions of section 11, article XI, of the California Constitution.

It should be noted that the communication received by your Committee indicates that the proposed legislation is designed to protect the health and safety of a specific group, to wit: people who walk the streets without shoes or other protective footwear. No mention is made of danger of injury or contamination to the public in general. One of the basic criteria in regard to the validity of police regulations is that they exist for the benefit of the public generally, as distinguished from some special group or individual. Certain apparent exceptions to this rule are not in point under the circumstances presented. Unless the proposed legislation can be justified as protecting the general public from disease or injury, legislation designed solely to protect that portion of the populace who desire to roam the streets barefooted cannot be justified as a legitimate exercise of the police power.

However, if there is evidence that said practice presents a hazard to the health of the general public, it is conceivable that an ordinance forbidding or otherwise regulating the same would be upheld as a valid exercise of the police powers.

Mr. Robert J. Dolan

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April 1, 1969

While the courts may not question the wisdom of enacting reasonable regulations designed to protect the public health, the means adopted must be reasonably adapted to remedy the evil against which the law was designed.

If the Committee wishes to pursue the subject further, it should consult with competent medical authority. If, from the evidence presented by medical authority, the Committee is reasonably convinced that the practice of walking barefoot is a substantial health hazard to the general public as distinguished from a small segment thereof, and reasonable means are proposed to remedy the condition, I will be glad to advise you further concerning the matter.

Very truly yours,

WRL

THOMAS M. O'CONNOR
City Attorney

April 8, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Proposed Sick Leave Rule Amendment
Authorizing Lump Sum Cash Payment for
Unused Sick Leave Upon Retirement or
Death of Police Officer; Effect Upon
Death Benefit Provided for by Charter

Dear Mr. Dolan:

This is in reference to your letter of April 4, 1969, wherein you request my opinion in connection with a question raised at last Thursday's meeting of the Legislative and Personnel Committee as to the validity of the proposed amendment in the light of the provisions of subsections (c) and (e) of Section 166 of the Charter, which provide for a death benefit payable to the family, estate, or beneficiaries of a police officer dying prior to his retirement.

I concur with the oral opinion given the full Board of Supervisors at its meeting of Monday, April 7, 1969, that the payment authorized under the proposed amendment is not a "death benefit" and is not in conflict with either subsection (c) or (e) of Section 166 of the Charter. The payment herein is authorized under the provisions of Sections 35.5.1 and 153 of the Charter and would be payable independent of the provisions of Section 166.

Very truly yours,

JJS

THOMAS M. O'CONNOR
City Attorney

April 14, 1969

William F. Murray, Chief
San Francisco Fire Department
260 Golden Gate Avenue
San Francisco, California 94102

Subject: Permit Requirement for Showing
Motion Pictures

Dear Chief Murray:

This is in reply to your letter inquiring as to the necessity of certain occupancies obtaining a permit for the operation of motion picture theaters. Attached to your letter is a list of four theaters presently operating in San Francisco without benefit of permit. Subsequent communication with Captain George Ryst of the Fire Department has elicited the information that the occupancies contend they are a public assembly with an occupancy load of less than 100 persons and that, therefore, they need not obtain a permit. Your letter further indicates that the occupancies are open to the public and a fee is collected for admission.

Section 20.03 of the San Francisco Fire Code provides that:

"No building or structure housing a theater, motion picture theater, public assembly or open air assembly shall be maintained, operated or used for such purpose unless a permit has been issued by the Fire Department."

Although four exceptions are specified, the occupancies in question would seem to be relying upon exception No. 2 which provides that permits will not be required for buildings or structures housing public assemblies where the occupant load is less than 100 persons.

Section 20.01 of the San Francisco Fire Code defines a public assembly so as to expressly exclude motion picture theaters. The entire definition is set forth below for your information and use.

William F. Murray, Chief

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April 14, 1969

"PUBLIC ASSEMBLY or ASSEMBLY HALL shall mean a building or part of a building, designed, intended or used for the assembling for any purpose of a group of more than fifty (50) persons in one or more rooms, whether such congregation, gathering or assemblage be of a public, restricted or private nature; except, that it shall not include Theatres, Motion Picture Theatres, Schools or Open Air Assembly Units." (Emphasis added.)

Furthermore, the same section defines a motion picture theater as follows:

"MOTION PICTURE THEATRE shall mean a building or part of a building without a working stage, designed for the specific purpose of displaying motion, audible or television pictures before an assemblage of persons, whether such assemblage be of a public, restricted or private nature."

Considering your description of the occupancies as being open to the public, and showing motion pictures for a fee, I see no validity in the assertion that such occupancies are actually public assemblies.

The San Francisco Municipal Code, Part III, Section 1, provides for the issuance of a permit for the conduct of a specified business at a specified location. Section 1.51 is particularly applicable to this problem:

"SEC. 1.51. For the maintenance, operation and use of motion picture theatres, theatres, public assembly units and open air assembly units--by the Fire Department; subject to the approval of the Bureau of Building Inspection."

Briefly stated, Section 1.51 cited above, together with Section 3 of the San Francisco Municipal Code, Part III, provide that the permit for the maintenance, operation and use of motion picture theaters shall be issued by the Fire Department, approved by the Bureau of Building Inspection, fees collected by the Tax Collector, and the actual delivery of the permit made by the Tax Collector.

The sole reference to the size of the motion picture theater is contained in Section 143 of Part III of the San Francisco Municipal Code which provides that all theaters of a seating capacity of less than 500 persons shall pay a license fee of \$100 per year.

William F. Murray, Chief

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April 14, 1969

Accordingly, occupancies which you have described appear to be in the business of operating motion picture theaters and should comply with the code sections referred to in the body of this letter.

Very truly yours,

GEK

THOMAS M. O'CONNOR
City Attorney

May 2, 1969

Juvenile Justice Commission
Youth Guidance Center
375 Woodside Avenue
San Francisco, California 94127

Attention: Mrs. William H. Green,
Secretary

Subject: Establishment and Maintenance of
School at Youth Guidance Center

Gentlemen:

This is in reply to your inquiry regarding the responsibility for providing teaching space at Youth Guidance Center. Your letter indicates that at the request of the Juvenile Justice Commission, the Board of Education has provided the Youth Guidance Center with four additional teachers. However, the Board has indicated that at present the space available for instruction is inadequate.

Pursuant to Section 850 of the Welfare and Institutions Code, it is the duty of the Board of Supervisors to provide and maintain a suitable house or place for the detention of wards, dependent children, and persons within the jurisdiction of the juvenile court. In the City and County of San Francisco such a facility is the Youth Guidance Center.

Section 856 of the Welfare and Institutions Code is set forth below in its entirety for your information and use. Briefly stated, it authorizes the Board of Supervisors to provide for the establishment and maintenance of public schools and school facilities at the juvenile hall, such schools to be maintained by the governing board of the school district. Pursuant to Section 134 of the Charter of the City and County of San Francisco, all of the schools of the San Francisco Unified School District are under the control and management of the Board of Education.

Juvenile Justice Commission -2-

May 2, 1969

"§856. Schools: Establishment and maintenance. The board of supervisors may provide for the establishment and maintenance of an elementary school and of a secondary public school in connection with the juvenile hall for the education of the children in the juvenile hall. The board, by ordinance, may provide for the establishment and maintenance of school facilities in the juvenile hall, and such schools shall be maintained by the respective governing boards of the elementary school district and of the high school district in which the juvenile hall is situated."

Section 859 of the Welfare and Institutions Code provides that whenever schools have been established according to the provisions of Section 856, set forth immediately above, "the board of supervisors shall provide suitable grounds, buildings . . . for the school . . ."

Accordingly, it is my opinion that under Section 859 of the Welfare and Institutions Code it is the duty of the Board of Supervisors to provide adequate and suitable grounds and buildings for the school facilities at Youth Guidance Center.

Very truly yours,

GEK

THOMAS M. O'CONNOR
City Attorney

May 5, 1969

Honorable Jack Morrison
Board of Supervisors
235 City Hall
San Francisco, California

Subject: Procedure for Qualification of
Initiative Measures and Declara-
tion of Policy

Dear Supervisor Morrison:

This is in response to your inquiry regarding the qualification of petitions in initiative or declaration of policy elections.

Section 4057 of the Elections Code provides that cities having a charter adopted and ratified under Article XI, Section 8 of the Constitution may provide for direct initiative by the voters in their charters. The Charter of the City and County of San Francisco was adopted and ratified pursuant to Article XI, Section 3 of the Constitution and has provisions for initiative petitions which govern.

Section 179 of the Charter deals, in part, with initiative petitions. Initiative means the power of the people to propose bills and laws, and to enact or reject them at the polls, independent of the legislative body. Under Section 179, the initiative petition would be to enact or reject at the polls any ordinance, act or other measure which is within the power of the Board of Supervisors to enact, or any legislative act which is within the power conferred upon any other board, commission or officer to adopt, or any amendment to the Charter. Both a declaration of policy and an initiative measure are placed on the ballot in substantially the same manner, that is, by filing with the Registrar of Voters a petition setting forth the measure in full signed by registered voters of the City and County.

Section 132 of the Charter sets forth the number of

Honorable Jack Morrison

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May 5, 1969

signatures required. The initiative measure and the declaration of policy both require the same number of signatures. If the petition contains the signatures of ten percent of the entire vote cast for Mayor at the last preceding general municipal election, then a special election may be called. If the petition contains five percent but less than ten percent of the entire vote cast for Mayor at the last preceding general municipal election, then the measure shall be submitted to the electorate at the next general state or municipal election.

Section 182 of the Charter provides that once a petition qualifies to go on the ballot, it does so without alteration. Once signatures have been obtained on a petition the measure cannot be changed in any way as it would then invalidate those signatures already obtained. An initiative measure and a declaration of policy are not interchangeable. An initiative measure becomes law when enacted at the polls while a declaration of policy places a duty on the Board of Supervisors to enact an ordinance or ordinances or take further action to carry such policy into effect.

It should also be noted that Section 179, supra, states that a Charter amendment (which may be an initiative measure) requires the percentage of registered voters' signatures as set forth in the Charter. However, amendments to the Charter are governed by the State Constitution, Article XI, Section 8, which requires a petition signed by fifteen percent of the registered electors. The Constitution controls in the instance of initiative petitions for a Charter amendment.

To summarize and specifically answer your questions; both an initiative measure (except a Charter amendment as above noted) and a declaration of policy require the same number of signatures, five percent of those voting for Mayor at the last preceding general municipal election to qualify for the next general state or municipal election and ten percent to qualify for a special election. A petition may not be changed from an initiative measure to a declaration of policy, or vice versa, once signatures are obtained.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

May 13, 1969

Mr. Walter H. Shorenstein, President
Recreation and Park Commission
McLaren Lodge, Golden Gate Park
San Francisco, California 94117

Subject: Authority of the Recreation and Park Commission
to Enter into a Lease Agreement with the San
Francisco Zoological Society for Society to
Collect Admission Fees to the San Francisco Zoo
to be Used for Zoo Improvements

Dear Mr. Shorenstein:

This is in response to your request for an opinion as to the authority of the Recreation and Park Commission to modify the existing lease agreement with the San Francisco Zoological Society to provide that the Society would have the authority to collect admission fees to the Zoo and deposit those fees in a special fund which would be used for capital improvements, repairs and reconstruction at the Zoo, the expenditures subject to the prior approval of the Recreation and Park Commission.

The following sections of the Charter quoted in part are applicable:

"Section 42. The recreation and park commission shall have the complete and exclusive control, management and direction of the parks, playgrounds, recreation centers and all other recreation facilities, squares, avenues and grounds which are in the charge of the commission on the effective date hereof, or are thereafter placed in the charge of the commission, except as in this chapter otherwise provided."

Mr. Walter H. Shorenstein

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May 13, 1969

"Section 42.2. Except as provided in section 42.3, the commission shall not lease any part of the lands under its control nor permit the building or maintenance or use of any structure on any park, square, avenue or ground, except for recreation purposes, and each letting or permit shall be subject to approval of the board of supervisors by ordinance."

Section 42, quoted in part above, gives the Commission primary authority to manage parks, playgrounds and recreational areas other than the California Palace of the Legion of Honor (Section 50), the M. H. de Young Memorial Museum (Section 51), and the California Academy of Sciences (Section 52). The Zoo area is a part of the lands under the jurisdiction of the Commission and therefore the Commission has full discretion to determine whether or not fees for admission to the Zoo should be charged. No gift in trust to the Zoo restricts this discretion.

Your request for an opinion refers to a lease agreement between the Recreation and Park Commission and the San Francisco Zoological Society which is presently in existence. The period of lease was for an initial five-year period with an option to renew for an additional five years. This option has been exercised by the Society so that the lease agreement is in force until 1973 (Section 42.2).

It is a general principle that even when a delegation of authority is permitted to non-governmental organizations, functions of government cannot be delegated without limitation or restriction. Article XI, Section 16, of the Constitution of the State of California, and Section 82 of our Charter provide that public moneys received by an officer or employee of the City and County shall be immediately deposited in the Treasury. Sections 53630 et seq. of the Government Code provide for the deposit of public moneys. These sections provide for the manner of deposit, the furnishing of security and crediting of interest. Section 53681 provides as follows:

"An officer or employee of a local agency who deposits money belonging to, or in the custody of, the local agency in any other manner than that prescribed in this article is subject to forfeiture of his office or employment."

Section 425 of the Penal Code provides as follows:

"Every officer charged with the receipt, safe-keeping, or disbursement of public moneys, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of a felony."

Mr. Walter H. Shorenstein

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May 13, 1969

In the case of Yarnall v. City of Los Angeles, 87 Cal. 603, the court held that a contract which would appoint a bank as a depository of public moneys was in violation of Section 425 of the Penal Code, supra, and Article XI, Section 16, of the Constitution of the State of California. Further, in the Yarnall case, supra, at page 609, the court stated as follows:

" . . . It seems clear, therefore, that a scheme which places public moneys in the possession and control of a private corporation is entirely inconsistent with the provisions of the section of the code above quoted."

(Also see: Ruggeri v. City of St. Louis, 429 S.W. 2d 765.)

The existing lease with the San Francisco Zoological Society covers specific demised premises and the fees collected are charged by the Society, and not by the City. The money collected is, therefore, the money of the Society and does not belong to the City except to the extent it has been allocated thereto under the trust agreement which is part of the lease.

The proposal set forth in your letter does not contemplate the extension of the lease to cover the entire San Francisco Zoological Garden area and the money collected would not be for services performed on the demised premises. The Society would merely be a collection agency for the City and the money collected would be public money belonging to the City and County. As the Zoo is under the management and direction of the Recreation and Park Commission pursuant to Section 42 of the Charter, the Recreation and Park Commission is charged with the receipt, custody and safe-keeping of the money. The Commission cannot evade this responsibility or the effect of the foregoing laws by making the Zoological Society its collection agent.

Further, it is my opinion that merely assigning to the Zoological Society the function of collecting Recreation and Park Commission charges to enter the Zoo would be in violation of the Civil Service provisions of the Charter.

Section 142 of the Charter requires that all positions in the City and County service, with certain specified exemptions not applicable here, shall be included in the classified Civil Service of the City and County. Section 142(4) of the Charter permits employment of persons for "expert professional temporary services." This authority has been upheld by the case of City and County of San Francisco v. Boyd, 17 Cal. 2d 606, where the City was authorized to employ the services of a civil engineer to prepare plans and reports relative to traffic and transit conditions within the City. However, the collection of fees at the Zoo would not require services which are expert or professional, and since the Zoo fees would be collected on a daily basis, the services would not be temporary.

Mr. Walter H. Shorenstein

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May 13, 1969

In summary you are advised as follows:

1. The Recreation and Park Commission is the manager of the San Francisco Zoo and, as such, it has a non-delegable duty through its employees to collect any and all admission fees to the San Francisco Zoo.

2. The present lease with the San Francisco Zoological Society cannot be amended to provide for the collection of such fees because of the prohibition found in the State Constitution, the City Charter, and the State Penal Code.

3. All permanent positions for employment within the City and County of San Francisco must comply with the Civil Service regulations (Section 142).

Very truly yours,

RAK

THOMAS M. O'CONNOR
City Attorney

April 18, 1969

Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Authority of Civil Service Commission
to Grant Reconsideration After
Dismissal of Probationary Employee
Pursuant to Charter Section 148

Gentlemen:

This is in answer to your request of March 24, 1969, in which you inquire into the authority of the Civil Service Commission to grant reconsideration of a matter heard and decided by the Commission wherein the Commission dismissed a promotional appointee during his probationary period pursuant to the provisions of Charter Section 148.

The authority of the Commission to grant reconsideration of decisions in the termination of probationary promotional and entrance appointees was discussed in City Attorney's Opinion No. 68-66, dated August 27, 1968. That opinion concluded that the Civil Service Commission does not have the power to reconsider its decision rendered on termination of a promotional appointee during the probationary period.

In the matter now before you, the question has arisen as to the effect on the lack of power to reconsider of misleading directions or information. The employee's attorney claims that he was given information and directions during the first part of the hearing which led him to conclude that the employee would at least be restored to his former position. The rule, as pointed out in City Attorney's Opinion Nos. 68-66 and 1570, and cases cited therein, is that when the language "the decision of the commission shall be final" is employed there is no power of reconsideration. Lack of due process was not an issue in those opinions.

An exception to this rule would be where there was a lack of due process which in effect prevented the employee from having a hearing as contemplated by Charter Section 148.

Civil Service Commission

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April 12, 1969

"It is a cardinal principle of due process that no one shall be bound or concluded by a judgment, either in respect to his person or his property, unless he has had his day in court. By this is meant that a person shall not be so bound until he has been duly cited to appear and has been afforded an opportunity to be heard and, upon such hearing, to offer evidence in support of his cause." 11 Cal. Jur.2d 808. In Aylward v. State Board of Chiropractic Examiners, 31 Cal.2d 833, the court stated: "Implicit in the cases denying a board's power to review or reexamine a question, however, is the qualification that the board must have acted within its jurisdiction and within the powers conferred on it."

The present matter would fit within the exception to the general rule if the Commission makes a finding that due to misleading information the employee did not present evidence on his own behalf which he would have presented had he not been misled. If the employee was misled into not producing evidence in his own behalf, then there was a lack of due process. When there is a lack of due process the decision of the Commission is void and, hence, subject to collateral attack. In this situation there is no good reason for holding the decision binding on the Commission and the matter should be reheard.

A further contention is made by the employee's attorney that the phrase "the decision of the commission shall be final" applies only to the termination of the promotive position and does not apply to restoration of the employee to his former lower rank position.

The phrase "the decision of the commission shall be final" applies, by its own terms, to the decision of the Commission, as set forth in Charter Section 143 and applies not only to the termination of a position but also to the return of such person to the position from which he was promoted.

In answer to your inquiry and based upon the facts given me, I conclude that this matter comes within an exception to the rule that the Commission may not reconsider a decision under Charter Section 148 where promotional appointees are involved. Where there is a lack of due process, which can be found here, the Commission may rehear the matter.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

April 21, 1969

Mr. George J. Grubb
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Termination Procedures for Probationary
Appointees Under Section 148 of the Charter

Dear Mr. Grubb:

This is in reply to your letter requesting my opinion with reference to procedures for terminating probationary appointees under Section 148 of the Charter. You have asked the following questions:

"Is the termination valid if the written notice of termination required during the probationary period is purposely and intentionally delayed by an act of the employee so that the termination notice is not prepared or mailed by the appointing officer until after the final day of the probationary period?"

Section 148 of the Charter provides that:

"At any time during the probationary period the appointing officer may terminate the appointment upon giving written notice of such termination to the employees and to the civil service commission specifying the reasons for such termination. . . ."

The first part of this question presupposes that the employee has in some way misled his appointing officer to delay giving the notice of termination during the six-month probationary period. The appointing officer has the duty to evaluate the performance of the probationer during the probationary period to determine his fitness for permanent appointment. If the performance of such appointee is unsatisfactory, the appointing officer may terminate the appointment by giving written notice as provided by Section 148 of the Charter. The civil service probationer is

Mr. George J. Grubb

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April 21, 1969

entitled to have the statutory procedure for termination strictly followed and a mere intent expressed by the appointing officer to dismiss a probationer during the probationary period without compliance with the procedural requirements will not effect a valid termination. (Wiles v. State Personnel Board, 19 Cal.2d 344; Brown v. State Personnel Board, 43 Cal.App.2d 70.) Unless the probationer is dismissed within the probationary period, his appointment shall become permanent. (Brown v. State Personnel Board, supra.) Therefore, in answer to your first question the appointing officer cannot rely on misrepresentations by the employee in order to extend the probationary period.

It is noted that Section 148 of the Charter requires that immediately prior to the expiration of the probationary period the appointing officer shall report to the Civil Service Commission as to the competence of the probationer. This further shows that the intent of Section 148 is that the probationary period shall be completed at the expiration of the six-month period and cannot be extended beyond that time. Failure to notify the Civil Service Commission as to the competence of the probationer prior to the expiration of the probationary period will result in the probationer's permanent appointment. (See Brown v. State Personnel Board, supra.)

You give an example under this question as follows:

"For example, an employee with 5-1/2 months of service, who being informed orally that his probationary appointment was to be terminated, absents himself on sick leave and cannot be contacted to be given formal written notice."

Section 148 of the Charter requires written notice of the termination and thus an oral notice of termination during the probationary period is invalid. A probationary appointee may be terminated by giving him written notice or by mailing such notice to his last known address. (Rule 24, Rules of Civil Service Commission; see also Matthews v. Civil Service Commission, 158 Cal. App.2d 169.) The fact that a probationary appointee absents himself during the last two weeks of the probationary period does not affect the right of the appointing officer to terminate such employee by mailing written notice to the appointee's last known address. (Redding v. City of Los Angeles, 81 Cal.App.2d 888.) Service of the notice of termination is effective on its deposit in the mail. (Sec. 1013, C.C.P.)

The second question is:

Mr. George J. Grubb

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April 21, 1969

"Is the termination notice valid if it is decided to terminate the probationary appointment on the last working day of the probationary period which would fall on Saturday, and the appointing officer's office being normally closed on the week end, a termination notice could not be prepared or delivered until Monday?"

Section 148 of the Charter establishes a six-month probationary period (except for Police) and gives the appointing officer power to terminate the appointment "during" that time. The probationary period commences on the date the employee reports to work and ends six calendar months thereafter. (See City Attorney Opinion No. 3641, February 8, 1945.) This probationary period cannot be extended beyond the six-month period by any act of the appointing officer or probationer. (See City Attorney Opinion No. 1445, June 8, 1960.) Therefore, it is my opinion that if a probationary period expires on a Saturday, or other holiday, such period cannot be extended to the next day which is not a holiday because such extension would have the effect of providing a longer probationary period than prescribed by Charter. Therefore, written notice of termination must be either given to the probationary employee or mailed to him within the probationary period in order to effect a valid termination.

Section 148 of the Charter provides that:

"The commission shall render a decision within 30 days after receipt of notice of termination."

In response to your third question, whether this 30-day period may be extended, your request is too general to allow a proper legal answer. If you wish to present a specific factual situation, I will be pleased to advise you further.

You are thus advised.

Very truly yours,

MCK

THOMAS M. O'CONNOR
City Attorney

April 25, 1969

Mr. George J. Grubb
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Validity of Civil Service Rule
Providing for Cut-off Date for
Seniority Credits in Promotional
Examination

Dear Mr. Grubb:

This is in response to your letter of March 14, 1969, in which you inquire into the allocation of points for seniority of service to John J. Hanlon, a candidate for H30 Captain, Fire Department. Mr. Hanlon is protesting the use of a beginning date for the examination rather than the date of the written examination as the cut-off date in computing City and County service.

Seniority credits are governed by Section 146 of the Charter wherein it states, in part:

"Fifteen per cent of the total credits obtainable under any promotive examination for eligibles for the police or fire department shall be allowed for seniority of service, which said credits shall be distributed as follows:

. . . .

"(f) For Promotion to the Rank of Captain in the Fire Department:

"Six-tenths of one percent of the total credits allowed for the entire examination shall be allowed for each year of service in the fire department until a total of nine per cent is reached; and in addition thereto there shall be allowed six-tenths of one per cent of the total credits allowed for the entire

Mr. George J. Grubb

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April 25, 1969

examination for each year of service in the rank of lieutenant until a total of six per cent of the credits of the entire examination is reached.

. . .

"(i) In promotional examinations in the police and fire departments, seniority of service and a clean record in the respective departments shall be added to the credit obtained by the applicant in the written portion of said examination, and shall be taken into consideration by the commission in determining his passing mark and his place upon the list of eligibles."

The Civil Service Commission has enacted Rule 4, Section 12.1, Calculation of Time, Age, Credits for Service, Etc. This rule provides that the official beginning date of the examination as set forth in the examination announcement shall be the final date for the calculation of credits for city and county service including seniority of service and years of service.

In Conroy v. Wolff (1950), 34 Cal.2d 745, referred to in your letter of request, a cut-off date was used for meritorious award credit as the date specified in the official examination announcement. The Commission did not have a rule with respect to using this date. The court held that the Charter (Section 146) made credit for meritorious service an integral part of the written examination and therefore meritorious service credits must be given up to the time of the written examination rather than to the date set in the official announcement of the examination. The court stated: "The discretionary power of the Commission to apply the language of the Charter by the adoption of a rule or regulation is not involved here. Assuming that the Commission could promulgate a rule setting a cutting off date for meritorious service credits, it has not done so."

In the matter of seniority of service credits the Commission has promulgated a rule (Rule 4, Section 12.1) which sets a cut-off date. The question here involves the validity of that rule.

Section 141 of the Charter confers authority upon the Civil Service Commission to adopt rules to govern its action in connection with Civil Service examinations. The rules so promulgated cannot be unreasonable, arbitrary, fraudulent or in conflict

Mr. George J. Grubb

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April 25, 1969

with the Charter, Terry v. Civil Service Commission, 108 Cal.App. 2d 861. In Nelson v. Dean, 27 Cal.2d 373, the court stated at page 881:

"Moreover, with particular reference to the administration of civil service, it is the policy of the Courts of this State that 'Courts should let administrative boards and officers work out their problems with as little judicial interference as possible Such boards are vested with a high discretion and its abuse must appear very clearly before the Courts will interfere.' [Citing cases.]"

In this connection, see also Almassy v. Los Angeles County Civil Service Commission, 34 Cal.2d 387 and Terry v. Civil Service Commission, supra.

Rule 4, Section 12.1, supra, read in the light of the cases cited above does not appear to be unreasonable, arbitrary, fraudulent, nor does it discriminate between classes. The remaining question involved is whether or not it conflicts with the Charter in view of the language of Conroy v. Wolff, supra, that the fair import of the language of Charter Section 146 is that the service is to be credited as of the date examinations are actually held.

The language of Charter Section 146 does not clearly define when seniority or meritorious credits should be cut off. The Conroy v. Wolff court was obliged to define the cut-off date in the absence of a rule. This is precisely the duty of the Civil Service Commission. Where the Charter does not define the details in exercising a power over which a commission is granted rule-making authority, then it evolves upon that commission to pass valid rules to define those details. As stated above, the Commission has discretion in this regard.

I conclude that the cut-off rule is a valid exercise of the Commission's discretionary powers.

It should be noted, however, that Rule 4, Section 12.1 indicates that the cut-off date is set because "it is desired to establish a final date for calculation of service and other factors in promotional examinations which will allow for all city and county experience possible in such examinations." The setting of the cut-off date does not necessarily achieve this result.

Mr. George J. Grubb

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April 25, 1969

If this result is to be achieved, then the rule should be amended to count these credits up to the date of the written examination.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

April 29, 1969

Mr. George J. Grubb
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Amendment of Administrative Provisions
of the Annual Salary Ordinance Relating
to Schedules of Compensation

Dear Mr. Grubb:

This is in reply to your letter requesting my opinion relative to amendment of the administrative provisions of the annual Salary Standardization Ordinance to provide a salary rate for an employee serving as 1202 Personnel Clerk based on his former position of 1932 Assistant Storekeeper. The rate requested by the subject employee is not provided for in the administrative provisions of the Salary Standardization Ordinance for fiscal year 1968-69.

Specifically your question is: "Can the Administrative Provisions of the annual salary ordinance for 1968-69 be amended at this time with such amendments being effective for the fiscal year 1968-69?"

Section 151 of the Charter prescribes the manner of fixing salaries, wages and compensations for city and county employees subject to that section. It provides that:

"A schedule of compensations or amendments thereto as provided herein which is adopted by the board of supervisors on or before April 1st of any year shall become effective at the beginning of the next succeeding fiscal year and a schedule of compensations or amendments thereto adopted by the board of supervisors after April 1st of any year shall not become effective until the beginning of the second succeeding fiscal year."

Mr. George J. Grubb

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April 29, 1969

It is clear from the quoted language of Section 151 that any amendment to the Salary Standardization Ordinance after April 1st of any year which amends the schedule of compensations therein cannot be effective until the second succeeding fiscal year. (See Miller v. City and County of San Francisco, 174 Cal. App.2d 109; City Atty. Opinion No. 68-55, dated July 1, 1968.) It appears from the facts presented in the subject matter that the Salary Standardization Ordinance for 1968-69 contains no provision for payment of the salary requested by the subject employee and such omission in the ordinance was not the result of administrative or clerical error. It is therefore my opinion that after April 1, 1968, the Salary Standardization Ordinance for 1968-69 cannot be amended to change the schedule of compensations therein, with such amendments to be effective for the fiscal year 1968-69. However, the Salary Standardization Ordinance may be retroactively amended wherein the amendment relates solely to the administrative provisions of that ordinance and not to the schedules of compensation in said ordinance. (See City Atty. Opinion No. 68-55, dated July 1, 1968.)

You are thus advised.

Very truly yours,

MCK

THOMAS M. O'CONNOR
City Attorney

April 30, 1969

Mr. Lyle J. O'Connell
Executive Director
Health Service System
450 McAllister Street
San Francisco, California 94102

Subject: Health Service System Not Required
to Comply With the Knox-Mills
Health Plan Act

Dear Mr. O'Connell:

This letter is in response to your request for an opinion as to whether the Knox-Mills Health Plan Act of 1965 requires the Health Service System to register with the Attorney General's Office.

The Knox-Mills Health Plan Act has been incorporated into the Government Code at Section 12530 et seq. Subsection (a) of Section 12530 states, in part, as follows:

"'Health care service plan' shall mean any form of organization or any arrangement whereby any person undertakes responsibility to provide, arrange for, pay for or reimburse any part of the cost of any health care service for a consideration consisting in part of prepaid or periodic charges; but the provisions of this article shall not apply to such a plan operated by an insurer, a nonprofit hospital service plan, or a fraternal benefit society, while such plan is so operated within the scope of the current certificate of authority issued by the Insurance Commissioner, or to such a plan operated under a trust fund negotiated by collective bargaining between an employer and a labor organization, as those terms are defined below or established and operated by an employer for his employees . . ."

It is my opinion that the portion of the Health Service System operated by the City (i.e., Plan I) would fall within the exception to the requirements of Section 12530. Plan I is a

Mr. Lyle J. O'Connell

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April 30, 1969

nonprofit hospital and health service plan established and operated by an employer for its employees.

In view of the foregoing, it is my opinion that the Health Service System is not required to comply with the Knox-Mills Health Plan Act.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

May 27, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California

Subject: Legislation Necessary to Permit Construction
and Operation of Convalescent Hospitals in
Residential Districts

Dear Mr. Dolan:

This is in response to your request as to whether any legislation other than appropriate rezoning legislation could be enacted by the Board of Supervisors which would permit the construction and operation of convalescent hospitals in residential districts.

The City Planning Code, Part II, Chapter II, of the San Francisco Municipal Code as amended to February 11, 1969, provides for a number of residential districts, commencing with R-1-D [One Family Residential District (detached dwellings)], to and including R-5-C (residential-commercial combined district).

The term "convalescent hospital" is not used in the City Planning Code. However, that term is included within the permitted conditional uses found in Section 203.2 which authorizes conditional uses in an R-2 District and subsequent residential districts.

Section 203.2 is quoted in part as follows:

"SEC. 203.2. Conditional Uses, R-2 Districts. The following uses shall be subject to approval by the Commission, as provided in Section 303:

Mr. Robert J. Dolan

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May 27, 1969

"(a) All conditional uses permitted in R-1 districts;

"(b) Hospital, sanitarium, but not including any institution primarily for the treatment of contagious diseases, or of drug or liquor addicts;

"(c) Rest home, orphanage, home for aged, where accommodation is provided for more than six (6) patients;

"(d) Philanthropic or eleemosynary institution;

""

Depending upon the type of operation of a convalescent facility, it could qualify for conditional use approval within subsections (b) and (c) quoted above. This determination would be made by the Department of City Planning based upon all of the applicable facts presented at the time that an application was made by a person desiring to operate a convalescent facility. Because the authorized conditional uses are first found in the R-2 District, such a use would not be permitted in R-1-D and R-1 residential districts of San Francisco.

Your request for an opinion makes a distinction between legislation and other appropriate rezoning legislation which could be acted upon by the Board of Supervisors. The request is taken to mean an amendment to the text of the City Planning Code rather than reclassification of an individual parcel of property as provided for in Section 117.1 of the Charter. Convalescent hospitals could be permitted in all residential districts by amending Section 201.2, which authorizes conditional uses in R-1-D Districts, by providing for new subsections authorizing convalescent hospitals as a conditional use.

Section 203.2 which presently authorizes this type of use as a conditional use in R-2 Districts would be amended to delete subsections (b) and (c) therefrom, and add those sections to 201.2 as subsections (j) and (k).

With these amendments to the City Planning Code, convalescent hospitals could be permitted in every residential district in San Francisco as a conditional use.

Very truly yours,

RAK

THOMAS M. O'CONNOR
City Attorney

May 28, 1969

Thomas J. Cahill
Chief of Police
Hall of Justice
850 Bryant Street
San Francisco, California 94103

Attention: Alfred G. Arnaud
Assistant Deputy Chief

Subject: Patrol Special Officers
Your File L-94

Dear Chief Cahill:

This is in reply to your letter inquiring whether or not recent amendments to Section 817 of the Penal Code have in any way changed City Attorney's Opinion No. 66-73-A dated December 30, 1966. Opinion No. 66-73-A concludes that Patrol Special Officers appointed pursuant to the provisions of Charter Section 35.10 are peace officers within the definition of Section 817 of the Penal Code.

Section 817 of the Penal Code has been repealed by the Statutes of 1968 and Chapter 4.5 has been added. Chapter 4.5 of the Penal Code deals with Peace Officers and commences at Section 830. Section 830.1 defines peace officers. The first paragraph provides:

"§ 830.1 Sheriffs, police, marshals, constables; authority
Any sheriff, undersheriff, or deputy sheriff, regularly employed and paid as such, of a county, any policeman of a city, any policeman of a district authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, or any constable or deputy constable, regularly employed and paid as such, of a judicial district, is a peace officer. The authority of any such peace officer extends to any place in the state: . . ."

Applying the same reasoning as that employed in Opinion

Thomas J. Cahill

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May 28, 1969

No. 66-73-A, it is my conclusion that a special patrol officer is a "policeman of a city" and is thus a peace officer within the definition of Section 830.1 of the Penal Code.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

May 5, 1969

Honorable Joseph E. Tinney
Assessor
Room 101 City Hall
San Francisco, California 94102

Subject: Tax Exemption of Consulate
General of Israel

Dear Mr. Tinney:

This is in reference to your letter of May 1, 1969, wherein you inquired generally concerning the exemption from taxation of the Consul General of Israel.

The City and County of San Francisco, with respect to taxing foreign consulates or embassies, must follow the mandate of the Constitution of the State of California, section 1 of article XIII.

"All property in the State except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, . . ." (Cal.Const.,art. XIII,§1)

With this constitutional requirement in mind, each treaty of the country or consulate requesting an exemption must be independently reviewed. All such treaties will be reviewed with regard to the precept of international courtesy and comity favoring the exemption of foreign governments from taxation if that precept can be justified in light of section 1, article XIII of the California Constitution.

This office has investigated whether a Consular Treaty between Israel and the United States is presently in effect. According to information compiled by the Department of State, Treaties in Force, Jan. 1, 1968, Dept. of State, at pages 110-112, there is no Consular Treaty between Israel and the United States presently in existence. It should be noted, however, that a Trade and Commerce Treaty was entered into force on April 3, 1954, but as this office has determined on other occasions, the most favored nation clause as it appears in a Trade

Honorable Joseph E. Tinney - 2 -

May 5, 1969

and Commerce Treaty is not sufficient to exempt from local taxes property owned or possessed by a sending government and occupied for consulate purposes.

The effect of the most favored nation clause is limited to matters which are the subject matter of the treaty in which it is contained, and while exemption of property owned by the sending state and used by a consulate is the subject of many Consular Treaties with other countries, such an exemption is not the subject matter of the Treaty of Friendship, Commerce and Navigation Between the United States of America and Israel of 1954. (Estate of Clausen, 202 Cal. 267; Petersen v. State of Iowa ex rel, the State Treasurer, 62 L.ed. 225.)

On October 14, 1964, the Department of State transmitted to the governors of the states a compilation, prepared by its legal adviser for treaty affairs, of the governments having treaty provisions in force with the United States of America providing for the exemption of government-owned property from real property taxes. The Government of Israel was not listed in such compilation. See "American Journal of International Law," vol. 59, p. 113 (1965). On page 378 of the same volume, the department is quoted as outlining the principle that "with respect to property taxation it is the general rule that in the absence of a treaty exemption, property owned by foreign governments and used for consular purposes is subject to local jurisdiction for the purpose, inter alia, of taxation."

In conclusion, therefore, you are advised that since the property used by the Consulate General of Israel does not enjoy an exemption from taxation under the laws of the United States or of the State of California, the constitutional mandate (art. XIII, §1) must be observed and no officer of the City and County has the power to waive this constitutional requirement.

I will be glad to consider any further information or documentation on this subject which is furnished to you by the Consulate General of Israel.

Very truly yours,

WJM

THOMAS M. O'CONNOR
City Attorney

May 19, 1969

Mr. S. Myron Tatarian, Director
Department of Public Works
260 City Hall
San Francisco, California 94102

Subject: Appointment of Nonregistered Individuals
to the Positions of Associate Engineer,
Engineer and Senior Engineer

Dear Mr. Tatarian:

This is in reply to your letter dated April 23, 1969, and received in this office on May 5, 1969, in which you ask whether the appointment of nonregistered persons to positions of Associate Engineer, Engineer and Senior Engineer would be illegal. This will also serve to confirm my oral opinion to you rendered May 5, 1969.

Professional engineers are licensed and regulated by the Professional Engineers Act (§ 6700 et seq., Bus. & Prof. Code). Only persons registered under the provisions of that act are entitled to take and use the title "professional engineer" or other similar title of engineering specialty (§ 6704). Any person, whether in public or private capacity who practices, or offers to practice civil, electrical or mechanical engineering must submit evidence that he is qualified to practice and that he is registered (§ 6730). It is unlawful for anyone other than a registered professional engineer, to stamp or seal any plans, specifications, plats, reports, or other documents with the seal of a registered engineer, or to in any manner use the title "engineer" unless registered (§ 6732). The Professional Engineers Act further makes it a misdemeanor for anyone to represent himself as, or use the title of, registered civil, electrical or mechanical engineer, or to use any other title whereby such person could be considered as practicing or offering to practice civil, electrical, or mechanical engineering, unless he is correspondingly qualified by registration (§6767(f)).

Mr. S. Myron Tatarian

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May 10, 1966

A subordinate to a civil, electrical or mechanical engineer is exempt from registration requirements insofar as he acts solely in a subordinate capacity, but such exemption does not permit the subordinate to practice civil, electrical or mechanical engineering in his own right, or to use those engineering titles (§ 6740). A subordinate is defined as any person who assists a registered professional engineer in the practice of professional engineering without assuming responsible charge of work (§ 6705). "Responsible charge of work" means the independent control and direction, by the use of initiative, skill, and independent judgment, of the investigation or design of professional engineering work or the supervision of such projects (§ 6703).

The Director of Public Works shall prepare all examinations, plans and estimates in connection with any public improvements and the City Engineer is responsible for making surveys, plats and certificates (§ 106, Charter). They are, therefore, in responsible charge of all engineering projects for the City and County and must be licensed engineers under the Professional Engineers Act. I have previously concluded (City Attorney Opinion No. 65-17, dated June 7, 1965) and reaffirm in this opinion that employees who are under the supervision, control and direction of the City Engineer are his subordinates and by law they are not required to possess registration as engineers (§ 6740, Bus. & Prof. Code). The same reasoning would apply to subordinates of the Director of Public Works. It is, therefore, my opinion that the appointment of nonregistered persons to positions of Associate Engineer, Engineer and Senior Engineer would not be in violation of the Professional Engineers Act.

It should be noted, however, that the architect or registered engineer in general responsible charge of the construction, reconstruction, alteration or addition to any school building shall delegate the responsibility for preparation of plans and specifications and supervision of the work of construction for mechanical and electrical work to professional registered engineers (§ 10.5, title 21, Cal. Admin. Code). Pursuant to this requirement, you must assign only registered engineers to work in the mechanical or electrical phases of school construction projects.

The proscriptions referred to in the Professional Engineers Act with respect to the use of certain engineering titles are obviously intended to protect the public from fraud and deception by unregistered persons who represent that they are

Mr. S. Myron Tatarian

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May 19, 1969

registered engineers. Even though subordinates to the Director of Public Works and the City Engineer need not be registered engineers, such subordinates should not be permitted to use their civil service titles in such manner as to indicate to the public that they are registered engineers, contrary to the provisions of the Business and Professions Code.

You are thus advised.

Very truly yours,

MCK

THOMAS M. O'CONNOR
City Attorney

May 27, 1969

Mr. T. F. Conway
Purchaser of Supplies
270 City Hall
San Francisco, California 94102

Re: May City or School District Participate
in State General Services Program for
Purchases

Dear Mr. Conway:

This refers to your letter inquiring as to the legality of participation by the City and County of San Francisco and the San Francisco Unified School District in the State General Services Purchase Program.

Government Code Section 14814 (formerly Section 13408.5), partially set forth below, establishes the authority of the Department of General Services to make purchases on behalf of local agencies.

"The Department of General Services is authorized to make purchases of materials, equipment, or supplies, other than printed material, on behalf of any city, county, city and county, district, or other local governmental body or corporation empowered to expend public funds for the acquisition of property, upon written request of such local agency; provided that such purchases can be made by the Department of General Services upon the same terms, conditions and specifications at a price lower than the local agency can obtain through its normal purchasing procedures."

Under the authority of Section 14814, local requirements are combined with State requirements and a joint bid is utilized. A service charge is imposed on each local agency utilizing this procedure.

Mr. T. F. Conway

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May 27, 1969

CITY AND COUNTY OF SAN FRANCISCO

The Charter of the City and County of San Francisco sets forth in Sections 88 through 94 detailed purchasing procedures, as does Chapter 21 of the San Francisco Administrative Code. Initially, it is noted that there is nothing in the Charter expressly limiting the power of the Purchaser of the City and County of San Francisco from entering into the purchase agreement with the State presently under consideration. It has long been recognized that the Charter of San Francisco is not a grant of power but is rather a limitation of power upon the City to perform certain acts.

State Administrative Code Section 1395.2 provides as follows:

"1395.2. Charter Cities. Cities governed by a charter specifying detailed purchasing procedures must follow the charter requirements, and may not avail themselves of the purchasing services of the State Department of General Services. Chartered cities submitting Local Agency Purchase Requests must attach to each request a certification, signed by or on behalf of the city attorney, advising that the requested purchase by the State Department of General Services does not conflict with the provisions of the city charter."

I am of the opinion that cities governed by a charter specifying detailed purchasing procedures may avail themselves of the State Purchase Program unless the charter expressly forbids the use of the Program. This is in accord with the view of the Department of General Services.

Chapter 21 of the City Administrative Code should be amended to specifically provide for participation by the City and County of San Francisco in the State General Services Purchase Program. Accordingly, a copy of said amendment has been prepared and is attached hereto.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

Article 9, Section 14 of the California Constitution authorizes the Legislature to provide for the incorporation and organization of school districts.

Section 134 of the Charter of the City and County of San Francisco provides that:

Mr. T. F. Conway

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May 27, 1969

"All of the public schools of the school district of the city and county shall be under the control and management of a board of education"

Regarding monetary matters, Section 136 of the Charter provides in part:

"The board shall establish regulations subject to the approval of the controller for the disbursement of all moneys belonging to the school department or the school fund or funds, and to secure strict accountability in the expenditure thereof."

Under the authority of Section 136, the Purchaser of the City and County of San Francisco presently makes purchases for the San Francisco Unified School District. However, I know of no legal objection to the Board of Education, by way of exercising its control and management of the schools and the property of the school district, availing itself of the purchasing services of the State Department of General Services. Furthermore, Education Code Section 15801 provides that "The governing board of any school district shall manage and control school property within its district."

It must be remembered that although the San Francisco Unified School District covers the same territory as the City and County of San Francisco, it is a separate entity. "The school system has been held to be a matter of general concern, rather than a municipal affair, and consequently is not committed to the exclusive control of local government." Butterworth v. Boyd, 12 Cal. 2d 140.

Very truly yours,

GEK

THOMAS M. O'CONNOR
City Attorney

May 29, 1969

William F. Murray, Chief
San Francisco Fire Department
260 Golden Gate Avenue
San Francisco, California 94102

Subject: Duties of Division of Fire Prevention--
Fire Hazards

Dear Chief Murray:

This refers to my memorandum relative to the responsibility and duties of the Chief of Division of Fire Prevention. To reiterate, I advised you in reply to the following inquiries:

- (1) Does the Charter make it the responsibility of the Bureau of Fire Prevention and Public Safety to abate any situation that it finds hazardous?

Charter Section 38 (fourth paragraph) declares certain structures or premises to be a public nuisance and states that "it shall be the duty of the bureau of fire prevention and public safety to prosecute abatement proceedings."

- (2) If the Bureau of Fire Prevention and Public Safety finds that another agency cannot immediately bring a structure into compliance, does the Bureau have the right and responsibility to effect said compliance where the public may be in danger?

Charter Section 38 (second paragraph) states that said bureau "shall inspect . . . all occupied or vacated structures and premises to determine whether or not compliance is being had with statutes, regulations and ordinances relative to fire prevention, fire protection and fire-spread control, and the protection of persons and property from fire. It shall enforce said statutes, regulations and ordinances and shall report violations to other departments having jurisdiction."

- (3) Under the provisions of Section 3.04 of the Fire Code, does the Chief of the Division of Fire Prevention and Investigations have the

William F. Murray, Chief

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May 29, 1968

responsibility of abating any fire hazard as defined in subsection (b) of that Section?

Where a public nuisance as defined in Charter Section 38 or a "fire hazard" as defined in Section 3.04 of the Fire Code exists, it is the responsibility of said bureau, or of the chief of the division of fire prevention and investigation, to order the nuisance abated or the hazard corrected.

At a subsequent conference you requested me to advise you whether Articles 3 and 4 of the Fire Code are in conflict with the new charter amendment and the enabling ordinance (Ordinance 28-67) and if so, whether clarification of provisions of Articles 3 and 4 of the Fire Code is necessary.

Yes, there is some conflict but the effect of the new charter amendment and ordinance seems clear.

Fire Code §4.07 (enacted January 28, 1965) requires permit approval by the Chief of Division of Fire Prevention and Investigation in the case of application for a permit to erect, alter or repair

"any building, structure or premises subject to laws or ordinances governing fire-spread control, means of egress, installation of fire extinguishing equipment and appliances, fire alarm installations, automatic sprinkler systems and automatic ventilating systems."

The new Charter §38 (which became law January 10, 1967) and Ordinance No. 28-67 (enacted January 26, 1967) require permit approval by the Chief of Division of Fire Prevention and Investigation only in the case of application for a permit to erect, alter or repair (repairs estimated to exceed \$1,000 in cost)

"any hospital, school, place of public assemblage as defined in the Building Code, other premises regulated by Title 19 of the California Administrative Code, flammable liquid storage facility, or other hazardous occupancy as defined by the Building Code,"

and

"all structures and premises insofar as they [the plans and specifications filed in connection with a permit application] involve the location of stand-pipes."

It is partly because of this conflict that section 7 of Ordinance No. 28-67 provides:

William F. Murray, Chief

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May 29, 1969

"Section 7. Superseded Provisions. When this ordinance becomes operative, provisions of existing city and county codes and ordinances, insofar as they provide for the performance of the functions, powers, and duties referred to in Section 2 which conflict with this ordinance, shall be superseded."

It seems clear that, where the new Charter §38 and Ordinance No. 28-67 do not require approval by the Chief of Division of Fire Prevention and Investigation of a permit to erect, alter or repair, his approval is not required.

Fire Code §3.04 and Charter §38 give the Chief of Division extremely wide discretion and the 1967 changes have not diminished this discretion. Fire Code §3.04 states, among other things, that "a fire hazard shall mean anything . . . (1) which increases or may cause an increase of the hazard or menace to life or property from fire, explosion or panic to a greater degree than that customarily recognized as normal by persons in the public service of preventing or extinguishing fire, or (2) which may obstruct, delay or hinder the saving of life from fire, explosion or panic, or (3) may become the cause of any obstruction, delay, or hindrance to the prevention, suppression, or extinguishment of fire." Fire Code §3.04 further states that "when the Chief of Division finds in the use of any building . . . dangerous or hazardous conditions . . . and such conditions . . . are declared to be a fire hazard . . . by said Chief, he is hereby authorized and directed to cause abatement of said fire hazard." It is reasonably clear that the Chief of Division is the official who, under §3.04, is responsible for determining (subject to review by the courts) what is, and what is not, "customarily recognized as normal by persons in the public service of preventing or extinguishing fire."

Charter §38 states that (a) the Chief of the Fire Department shall hold the Chief of Division of Fire Prevention and Investigation to the responsibility for the enforcement of all laws pertaining to fire prevention, (b) the Bureau of Fire Prevention and Public Safety shall inspect "all" structures and premises to determine whether compliance is being had with statutes, regulations, and ordinances relative to fire prevention, etc. and "shall enforce" same, and (c) "any structure or premises as provided in this Section 38 wherein there exists any violation . . . or which is maintained or used in such manner as to endanger persons or property by hazard or [of] fire, explosion or panic . . . is hereby declared to be a public nuisance, and it shall be the duty of the bureau of fire prevention and public safety to prosecute abatement proceedings."

While the duty of the Chief of Division to approve permits to erect, alter or repair certain buildings and structures has been

William F. Murray, Chief

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May 29, 1969

curtailed, this authority and responsibility respecting investigation and abatement of fire hazards in all buildings, structures and premises have not been changed. The Chief of Division, under your jurisdiction and control, has authority commensurate with his responsibility. Regardless of whether he has previously approved a permit, or whether the Department of Public Works, through its Bureau of Building Inspection and Central Permit Bureau, alone has done so, if the Chief of Division believes a fire hazard exists, he must act accordingly by ordering correction of the hazard and, if his order is disobeyed, by seeking abatement.

Correlation and cooperation between the Bureau of Fire Prevention and the Department of Public Works are provided for in Charter Section 38 and Ordinance No. 28-67. If it becomes necessary, I would suggest that you and the Chief Administrative Officer arrange for such additional procedures as may be required to carry out responsibilities and duties with respect to the prevention and correction of fire hazard in all structures and premises.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

June 3, 1969

Mr. Harry Albert
Assistant General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Circumstances Necessary to Invoke an
Estoppel Against City and Deny Its
Recovery of Erroneously Paid Excess
Salary

Dear Mr. Albert:

This is in response to your letter requesting my opinion concerning the salary rights of Mr. Raymond Sante, 8310 Sheriff's Lieutenant. Lt. Sante accepted a promotional appointment to the Class 8310 Lieutenant prior to the completion of his probationary period in Class 8308 Sheriff's Sergeant. He was placed in the fifth step of Class 8310 at a salary of \$1037.00 per month. At the time of his appointment he was in the fifth step of Class 8308 at a salary of \$941.00 per month. Since he had not completed his probationary period in Class 8308, he should have been appointed from his service in Class 8306, Senior Deputy Sheriff. This would have correctly placed him in the third step of Class 8310 at a salary of \$941.00, or exactly the same as before his promotion. Lieutenant Sante states that he would not have accepted the appointment had it not been represented to him he would be in the fifth step. The question of an estoppel has been raised based upon City Attorney's Opinion No. 69-27, dated February 10, 1969.

City Attorney's Opinion No. 69-27 holds that an overpayment of salary may be recovered and the public entity cannot be estopped except in rare and unusual circumstances. This opinion concerned appointments of employees as eligibility workers from Class 1426 Senior Clerk Typist and had they been placed in the correct increment as prescribed by the Salary Standardization Ordinance, their salaries would have been reduced by the acceptance of the appointment as eligibility worker, whereas they had erroneously been placed in a higher step. It was noted in that opinion

Mr. Harry Albert

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June 3, 1960

that when the error was discovered the employees all relinquished their positions and returned to their previous positions. In holding that this factual situation constituted rare and unusual circumstances it was based on the fact that the employees relied on representations to their detriment, i.e., a salary reduction.

The factual situation of the Sante matter does not parallel that of the eligibility workers in that, although misrepresentations were made to him and relied upon by him, Lt. Sante did not change positions to his detriment. His salary would not have been reduced and he acquired the right to advance by seniority to higher increments in the C310 class. This factual situation, in my opinion, does not constitute such rare and unusual circumstances as to invoke an estoppel against the City and deny its recovery of the excess salary paid.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

June 9, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Public Defender; Conflict of Interest
in Representing Multiple Defendants

Dear Mr. Dolan:

This is in reference to your letter of May 12, 1969, wherein you advise that the Finance Committee is of the opinion that the present interpretation of the law relating to representation of multiple defendants by the Public Defender is too restrictive; that the Public Defender should not be considered as a single entity, and requesting my advice as to what action, if any, the Board of Supervisors can take to eliminate the problem.

I assume that your reference to the present interpretation of the law relates to the cases, such as People v. Douglas, 61 Cal. 2d 430, holding that the refusal of a trial court to appoint separate counsel for multiple defendants where the interest of the co-defendants conflicted, constituted prejudicial error. The holding of the Douglas case, supra, is based upon a long line of California cases beginning with People v. Lanigan, 22 Cal. 2d 569, many of which are discussed at length in the Douglas case. The Lanigan case, supra, in turn, found its authority in the case of Glasser v. United States, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680, decided by the United States Supreme Court in 1942. Hence, it appears that the present interpretation of the law is solidly established and binding upon all courts at the state and federal levels.

With respect to the feeling of the Finance Committee that the Public Defender should not be considered as a single entity, I assume that it is the Committee's belief that the requirement of separate counsel for each defendant in a conflict case could be held to be satisfied by the assignment of a separate deputy public defender to each such defendant. While it does not appear that

Mr. Robert J. Dolan

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June 9, 1969

this particular point has arisen in any of the cases cited hereinabove, the court in Sarter v. Siskiyou County, 42 Cal. App. 530, at page 536, held that a deputy under a public officer (such as the public defender) and the officer or person holding the office are, in contemplation of law and in an official sense, one and the same person. Accordingly, it would appear that the Committee's position would likewise be subject to challenge as violative of the rule cited hereinabove.

In view of the foregoing, it is my opinion that there is, under the present state of the law, no action that the Board of Supervisors can legally take to eliminate this problem.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

JJS

July 7, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Hearing on Adoption of Redevelopment Plan;
Must Testimony be Given under Oath or
Affirmation; Opportunity for Cross-Examina-
tion of Witnesses

Dear Mr. Dolan:

This is in response to your request for an opinion as to the procedure followed in adopting the Redevelopment Plans for the Butchertown Approved Redevelopment Project Area. Specifically you request whether witnesses during the public hearing were required to give testimony under oath or affirmation and whether cross-examination by opponents of the Plan should have been allowed.

The Redevelopment Agency of San Francisco is a state agency functioning under state law to fulfill state purposes. (See Fellom v. Redevelopment Agency (1958), 157 Cal.App.2d 243.) The procedure for the adoption of a Redevelopment Plan by the Board of Supervisors is provided for by the Community Redevelopment Law found in the Health and Safety Code of the State of California. Necessarily, since redevelopment has been held to be a matter of state-wide concern, the rules of procedure to be followed are found in the provisions of the Health and Safety Code.

In the case of Berggren v. Moore (1964), 61 C.2d 347, an action for declaratory relief and proceeding in mandamus or certiorari were brought by property owners to review proceedings of a City Redevelopment Agency and City Council in connection with the adoption by the City of a Redevelopment Plan.

In the hearing before the trial court the petitioners



Mr. Robert J. Dolan

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July 7, 1969

awareness and intent by the Legislature that the agency's role in the formulation and adoption of a proposed plan for submission to the legislative body for final adoption or rejection may be carried out with a lesser degree of formality than that specified for the hearing before the legislative body. This view finds further support in the requirement of section 33730.5 [presently 33361(b)] that the notice of the latter hearing specifically state when and where those objecting to the plan, or denying the existence of blight or the regularity of prior proceedings, may present their showing.

"The unchallenged finding of the trial court is that at the hearing before the council witnesses were sworn and plaintiffs were given the opportunity to cross-examine them. Plaintiffs make no complaint on this score, and the requirements of due process were obviously met. It may also be noted that at the hearing before the agency plaintiffs were invited to ask questions of the witnesses through the chairman of the agency, but declined to do so. Neither error nor prejudice is shown."

It should be noted that the present provisions for a joint public hearing do not substantially change any of the above code provisions (§33356, Health and Safety Code).

During the public hearing respecting the adoption of the Plan of the proposed Butchertown Approved Redevelopment Project Area you state that the witnesses were not sworn before being permitted to appear before the Board. While the Health and Safety Code provides for a public hearing by the Board of Supervisors and Redevelopment Agency, and further provides that certain sections of the code shall be applicable, the Health and Safety Code does not require the administration of an oath to any such persons.

In Flagstad v. City of San Mateo (1957), 156 C.A.2d 138, and Jackson v. City of San Mateo, 148 C.A.2d 667, involving variance hearings before the San Mateo City Council, the court held that it was clear that witnesses need not be sworn before testifying in this type of case.

In Iscoff v. Police Commission (1963), 222 C.A.2d 395, a San Francisco case involving the transfer of a pawnbroker's license, the court held that witnesses appearing before the Chief of Police and Board of Permit Appeals need not be sworn. The court said, at page 409:

"Nowhere in any of the charter or municipal code

Mr. Robert J. Dolan

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July 7, 1969

provisions establishing the city's applicable permit procedure do we find a requirement that the witnesses be sworn."

Under the circumstances it is my judgment that while caution may indicate the administration of an oath or affirmation of all persons appearing at such Redevelopment hearings, none need be required.

The transcript of the hearings before the Board of Supervisors reveals that at the hearing concerning the adoption of the Butchertown Approved Redevelopment Plan specific questions were posed by opponents of the Plan to staff members of the Redevelopment Agency with answers received from those staff members. In other words, cross-examination of the witnesses was allowed by the Board of Supervisors sitting as a committee of the whole and, as such, the proper procedure was followed.

You are advised that there was no impropriety that would vitiate the action of the Board of Supervisors in approving the ordinance adopting the Plan and the Cooperation Agreement to implement the Butchertown Redevelopment Plan.

Very truly yours,

RAK

THOMAS M. O'CONNOR
City Attorney

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, VOL. 37, PART 1, 1907. LONDON: PUBLISHED BY THE INSTITUTE, 21, BEDFORD SQUARE, W.C. 1. 1907.

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VI. THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, VOL. 37, PART 1, 1907. LONDON: PUBLISHED BY THE INSTITUTE, 21, BEDFORD SQUARE, W.C. 1. 1907.

VII. THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, VOL. 37, PART 1, 1907. LONDON: PUBLISHED BY THE INSTITUTE, 21, BEDFORD SQUARE, W.C. 1. 1907.

VIII. THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, VOL. 37, PART 1, 1907. LONDON: PUBLISHED BY THE INSTITUTE, 21, BEDFORD SQUARE, W.C. 1. 1907.

IX. THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, VOL. 37, PART 1, 1907. LONDON: PUBLISHED BY THE INSTITUTE, 21, BEDFORD SQUARE, W.C. 1. 1907.

July 10, 1969

Mr. George J. Grubb
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Military Leave of Absence for Employees
Who Enlist in the Armed Forces

Dear Mr. Grubb:

This is in reply to your letter requesting my opinion whether an employee who had resigned from his position in 1950 to enlist in the armed forces is entitled to a military leave of absence from his city position. Specifically, you refer to Mr. Robert E. Lee Walker, whose original date of employment was January 25, 1947, and who was certified to a permanent position of S102 Conductor on July 25, 1947. Mr. Walker served in that position until July 21, 1950, when he resigned to enlist in the U.S. Navy. Upon his honorable discharge from the military service, Mr. Walker was appointed as a permanent limited tenure S102 Conductor on July 16, 1954, and subsequently, on May 26, 1955, he was appointed to a permanent position in that class.

Under Section 395.1 of the Military and Veterans Code a public employee is entitled to a military leave of absence and to reinstatement to his former position after termination of his active military service. (See City Attorney Opinions No. 63-36, dated August 15, 1963, and No. 62-22, dated April 10, 1962.) The provisions of Section 395.1 are of statewide or general public concern and will control and supersede municipal and county charter regulations on the same subject matter. (Murdy v. City of Los Angeles, 201 Cal.App.2d 468; Palaske v. City of Long Beach, 93 Cal.App.2d 120; Cunningham v. Hart, 80 Cal.App.2d 902)

In 1950 when Mr. Walker enlisted in the U.S. Navy, Section 395.1 of the Military and Veterans Code provided as follows:

ROYAL SOCIETY

OF LONDON

1880

THE JOURNAL OF THE ROYAL SOCIETY OF LONDON, containing the proceedings of the Society, and the papers read before it, during the year 1880.

LONDON: PUBLISHED BY THE SOCIETY, 1, WHITEHALL COURT, LONDON, E.C. 4.

1881

July 10, 1969

"(a) Notwithstanding any other provision of law to the contrary, any . . . employee of the . . . city and county . . . who, in time of war or national emergency . . . , leaves or has left his office or position prior to the end of the war, or the termination of the national emergency, . . . to join the armed forces of the United States and who does or did without unreasonable and unnecessary delay join the armed forces shall have a right, if released or discharged under conditions other than dishonorable, to return to and re-enter upon the office or position within six months after the termination of his active service with the armed forces, . . ." (Emphasis added.)

"(b) Upon such return and re-entry to the office or employment the officer or employee shall have all of the rights and privileges in, connected with, or arising out of the office or employment which he would have enjoyed if he had not been absent therefrom; provided, however, such officer or employee shall not be entitled to sick leave, vacation or salary for the period during which he was on leave from such governmental service and in the service of the armed forces of the United States."

This section was amended after Mr. Walker entered the armed forces to provide that the public employee shall have three months rather than six months after termination of his active military service in which to return to his former position. However, since it is indicated in your letter that, upon his honorable discharge from the military service, Mr. Walker received a permanent limited tenure appointment as a S102 Conductor, it is unnecessary to discuss the effect of this amendment on the rights of Mr. Walker.

It is clear that Section 395.1 of the Military and Veterans Code specifically grants a military leave of absence to a public employee who joins or enlists in the armed forces. Accordingly, it is my opinion that Mr. Walker is entitled to a military leave of absence for the period of his active service in the U.S. Navy if it is ascertained that he had resigned from his city position to enlist in the military service; that he did enlist within a reasonable time after his resignation; and that he was released or discharged from the U.S. Navy under conditions other than dishonorable. If Mr. Walker has met these conditions for a military leave of absence, then he is entitled under Section 395.1(b) of Military and Veterans Code to have his seniority and retirement rights based on his original date of employment of January 25, 1947.

You are thus advised.

Very truly yours,

MCK

THOMAS M. O'CONNOR
City Attorney

June 27, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Rewards for Information re False
Fire Alarms - Form of Resolution
Your File 336-69

Dear Mr. Dolan:

This is in reply to your letter requesting my opinion as to the legality of suggested legislation which would provide for rewards to individuals furnishing information leading to the apprehension and conviction of persons who turn in false fire alarms, and for appropriate legislation to implement the same if found legally permissible.

As noted in your letter, Section 148.4 of the Penal Code of the State of California provides for penalties for persons convicted of turning in a false fire alarm. Under the provisions of subsection (1) of Section 148.4, a person who willfully and maliciously turns in a false fire alarm is guilty of a misdemeanor, and under the provisions of subsection (2) he is guilty of a felony if the false alarm results in great bodily injury or death.

The general principles of law relating to the giving of rewards by a municipality for the furnishing of information leading to the apprehension and conviction of persons violating penal laws of the state are set forth in the case of Griffin v. City of Los Angeles (1933), 134 Cal.App. 763, as follows (p. 774):

"Municipal corporations are chartered, as we have seen, to regulate and administer the local and internal concerns of the people of the particular locality which is incorporated. They are not created to execute the criminal laws of the state. That is a matter for which the state has made ample provision by general statutes,

CHAPTER I

OF THE

REIGN OF

CHARLES THE FIRST

1625

THE first year of the reign of Charles the first was a year of great calamity to the kingdom. The king was then but twenty years of age, and his government was in many respects defective. He was a man of great abilities, but of a very violent and arbitrary temper. He was a great lover of his own power, and he was determined to maintain it at any cost. He was a great enemy to the laws of the kingdom, and he was determined to break them at any cost. He was a great enemy to the people, and he was determined to oppress them at any cost. He was a great enemy to the church, and he was determined to destroy it at any cost. He was a great enemy to the world, and he was determined to conquer it at any cost.

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Mr. Robert J. Dolan, Clerk 2

June 27, 1969

and with which the corporation as such has nothing to do, unless expressly authorized by its charter or by statute. Hence the offer of a reward for the apprehension and conviction of an offender against the criminal law of the state is the exercise of a state power, and is foreign to the objects and purposes of a municipal corporation.' [Cases cited.]

"We conclude, therefore, that although in a proper case the present charter of the City of Los Angeles does not prevent its legislative body from appropriating funds to pay a reward for the apprehension of one who has violated a penal law of the state, it must, in order that they may exercise such authority, appear not only that the council recognizes that the action is taken for immediate protection of the public peace, health and safety, but further that it is taken in recognition of the fact that the need for protection of public interest is peculiarly local and municipal, and that it be directed toward the apprehension of one so recognized as a menace to local rights."

It is not necessary to determine whether there are special local circumstances currently existing in the City and County of San Francisco which would warrant a finding that the giving of a reward for the arrest and conviction of persons turning in false fire alarms is a matter of special local interest in view of the provisions of Section 26207 of the Government Code which was adopted in 1959. That section provides "The board of supervisors may offer and pay rewards, payable from county funds, for the furnishing of information leading to the apprehension and conviction of persons who willfully destroy or damage property of the county."

It is my opinion that the breaking of fire alarm box glass and the energizing of the system which must be thereafter rewound by the Department of Electricity, in addition to the wear and tear on fire fighting equipment and the consumption of fuel in responding to false alarms results in the damage and destruction of property of the City and County within the contemplation of Section 26207 of the Government Code, and that the furnishing of information leading to the arrest and conviction of a person guilty of such an act may be made the subject of a reward by the Board of Supervisors.

Accordingly, I am forwarding herewith a draft ordinance providing for the offering of rewards for information leading to the arrest and conviction of persons who turn in false fire alarms in violation of the provisions of Section 148.4 of the Penal Code.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the system has solutions for all values of the parameters α and β if the function $f(x)$ is continuous and has a bounded derivative. The second part of the paper is devoted to a detailed study of the properties of the solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the solutions of the system of equations (1) are unique and depend continuously on the parameters α and β . The third part of the paper is devoted to a study of the asymptotic properties of the solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the solutions of the system of equations (1) approach zero as $x \rightarrow \infty$ for all values of the parameters α and β . The fourth part of the paper is devoted to a study of the stability properties of the solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the solutions of the system of equations (1) are stable for all values of the parameters α and β . The fifth part of the paper is devoted to a study of the properties of the solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the solutions of the system of equations (1) are bounded for all values of the parameters α and β . The sixth part of the paper is devoted to a study of the properties of the solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the solutions of the system of equations (1) are continuous for all values of the parameters α and β . The seventh part of the paper is devoted to a study of the properties of the solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the solutions of the system of equations (1) are differentiable for all values of the parameters α and β . The eighth part of the paper is devoted to a study of the properties of the solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the solutions of the system of equations (1) are twice differentiable for all values of the parameters α and β . The ninth part of the paper is devoted to a study of the properties of the solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the solutions of the system of equations (1) are three times differentiable for all values of the parameters α and β . The tenth part of the paper is devoted to a study of the properties of the solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the solutions of the system of equations (1) are four times differentiable for all values of the parameters α and β .

July 3, 1969

Mr. Thomas J. Mellon
Chief Administrative Officer
289 City Hall
San Francisco, California 94102

Subject: Legality of Transferring Refundable
Deposits for Side Sewer Installations
to General Fund

Dear Mr. Mellon:

With reference to the written inquiry by S. M. Tatarian, Director of Public Works, with regard to the above subject, forwarded to me through your office, please be advised as follows:

You have stated that under provisions of Section 109 of the Public Works Code deposits are made by persons to defray the cost of opening or tearing up the street and of installing, connecting or repairing the side sewer. You further state that for a variety of reasons, said depositors have not been refunded the unused portions of their deposits, and you inquire whether or not said moneys may be transferred from the Trust Account in which they are now kept to the General Fund.

Title 5, Article 3, of the Government Code captioned "Financial Affairs," Sections 50050-50053, governs the subject of unclaimed money in the treasury of a local agency and the disposition of said moneys.

Section 50050 reads as follows:

"§ 50050. Unclaimed money; acquisition of ownership; publication of notice. Except as otherwise provided by law, money not the property of a local agency which remains unclaimed in its treasury or in the official custody of its officers for 10 years is the property of the local agency after notice if no verified complaint is filed and served. At any time after the expiration of the 10-year period the treasurer of the local agency



Mr. Thomas J. Mellon

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July 3, 1969

may cause a notice to be published once a week for two successive weeks in a newspaper of general circulation published in the local agency."

Section 50051 reads as follows:

"§ 50051. Unclaimed money; notice; contents. The notice shall state the amount of money, the fund in which it is held, and that it is proposed that the money will become the property of the local agency on a designated date not less than forty-five days nor more than sixty days after the first publication of the notice."

Section 50052 reads as follows:

"§ 50052. Unclaimed money; acquisition of ownership; time; procedure to defeat change. Unless some person files a verified complaint seeking to recover all, or a designated part, of the money in a court of competent jurisdiction within the county in which the notice is published, and serves a copy of the complaint and the summons issued thereon upon the treasurer before the date designated in the notice, upon that date the money becomes the property of the local agency."

Section 50053 reads as follows:

"§ 50053. Unclaimed money; transfer to general fund on acquisition of ownership. When any such money becomes the property of a local agency and is in a special fund, the legislative body may transfer it to the general fund."

There is no provision for escheat to a local government prior to the 10-year period; further, there is no provision for the transfer of moneys, kept in trust fund accounts by a local agency, to the General Fund prior to the expiration of the 10-year period.

The treasurer of the City and County of San Francisco may proceed under the aforesaid Government Code sections to take the necessary steps to publish notice that it is proposed that the money in custody for 10 years will become the property of the City and County of San Francisco, all as provided in the aforesaid sections of the Government Code.

You are advised accordingly.

Very truly yours,

DJK

THOMAS M. O'CONNOR
City Attorney



July 7, 1969

Mrs. A. Boyd Puccinelli, Chairman
Delinquency Prevention Commission
45 Hyde Street, Room 302
San Francisco, California 94102

Subject: Delinquency Prevention Commission;
Minor as Member Thereof

Dear Mrs. Puccinelli:

This is in response to your letter of July 1, 1969, wherein you ask if a person under 21 years of age could be appointed to membership on your Commission.

The Delinquency Prevention Commission was established by ordinance pursuant to Section 535.5 of the Welfare and Institutions Code of the State of California (San Francisco Admin. Code, § 20.50). Both the enabling state legislation and the ordinance provide that the only qualification for membership on said Commission is that said members be "citizens."

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. (U.S. Const., 14th Amend.) Abbott defines a "citizen" as: "A person who owes allegiance to and may claim reciprocal protection from a government; one who is a member of the United States, or of the body politic of a sovereign state. Age or majority is not involved . . ." (1 Abb. Law Dict. 223.) (Emphasis added.)

Accordingly, it is my opinion that a person under 21 years of age who is a citizen could be appointed to membership on the Delinquency Prevention Commission.

Very truly yours,

JJS

THOMAS M. O'CONNOR
City Attorney



July 15, 1969

Mr. Nathan B. Cooper
Controller
109 City Hall
San Francisco, California 94102

Subject: Supplemental Appropriation From
Funds Certified in a Fiscal Year After
End of Fiscal Year; Cancellation of
Certification

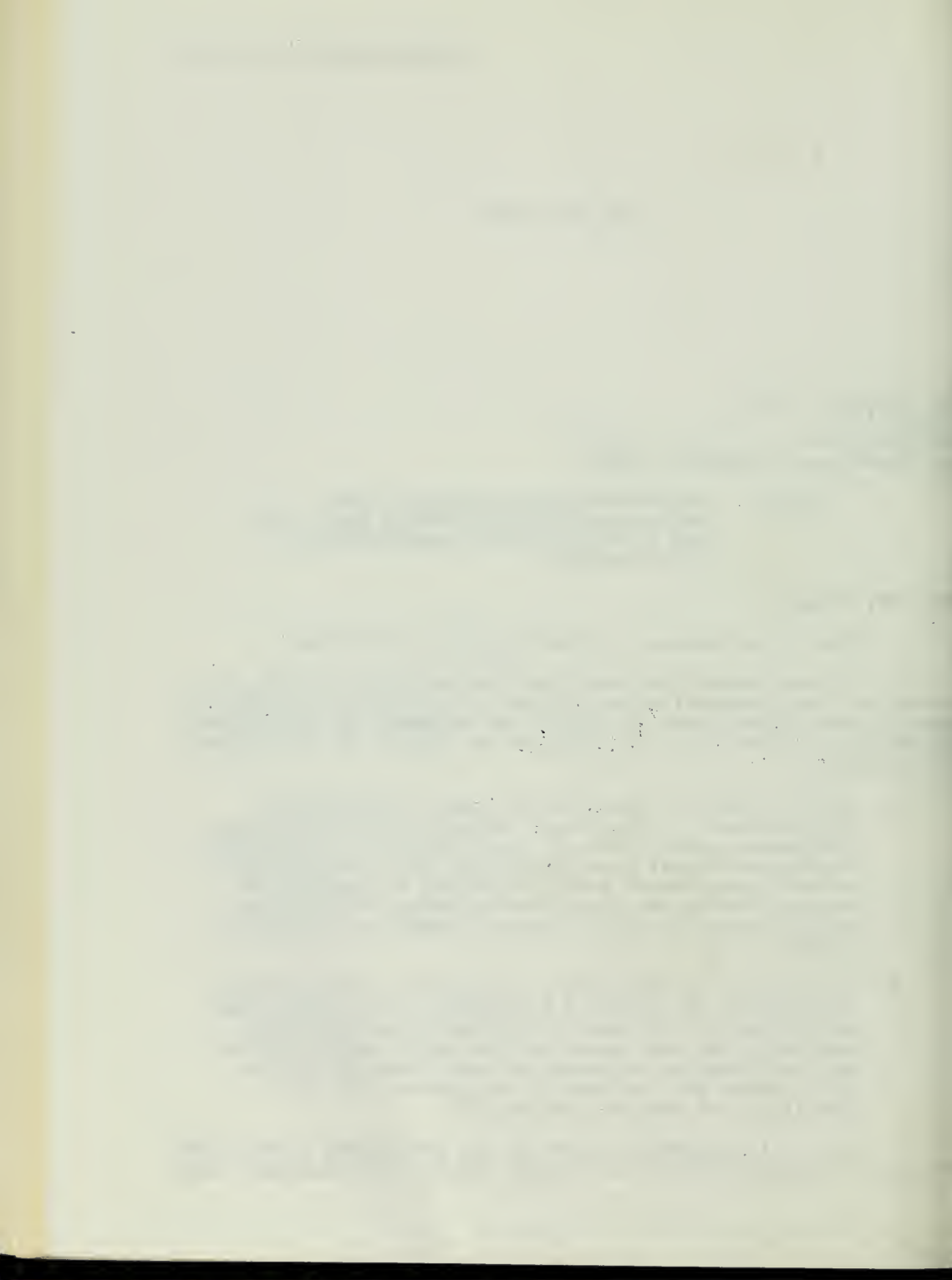
Dear Mr. Cooper:

This is in response to your July 10, 1969 letter.

In your letter you point out that on March 6, 1969, you certified a supplemental appropriation ordinance and that on the date of your letter, July 10, 1969, the ordinance was still pending in Finance Committee. You request my opinion on the following questions:

1. May the Board of Supervisors legally appropriate, supplementary to the annual budget and appropriation ordinance, unappropriated funds received or receivable during one fiscal year (1968-1969) for expenditure in a subsequent fiscal year (1969-1970) by passing for second reading an appropriation ordinance after the commencement of such subsequent fiscal year (July 1, 1969)?
2. Assuming no action or only passage for second reading is taken by the Board of Supervisors on a request for appropriation for which I have certified funds are available, at what point in time may I legally cancel my certification and consider such funds as surplus to be taken into account in accordance with the provisions of Charter Section 80?

1. It is assumed, in view of the provisions of the first paragraph of Section 80 of the Charter hereinafter discussed under



Mr. Nathan B. Cooper

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July 15, 1969

2, that this general question relates to the situation discussed in the example set forth in your letter where a certification as to funds available has been made in a fiscal year that has ended and the appropriation ordinance is to be passed in the subsequent fiscal year.

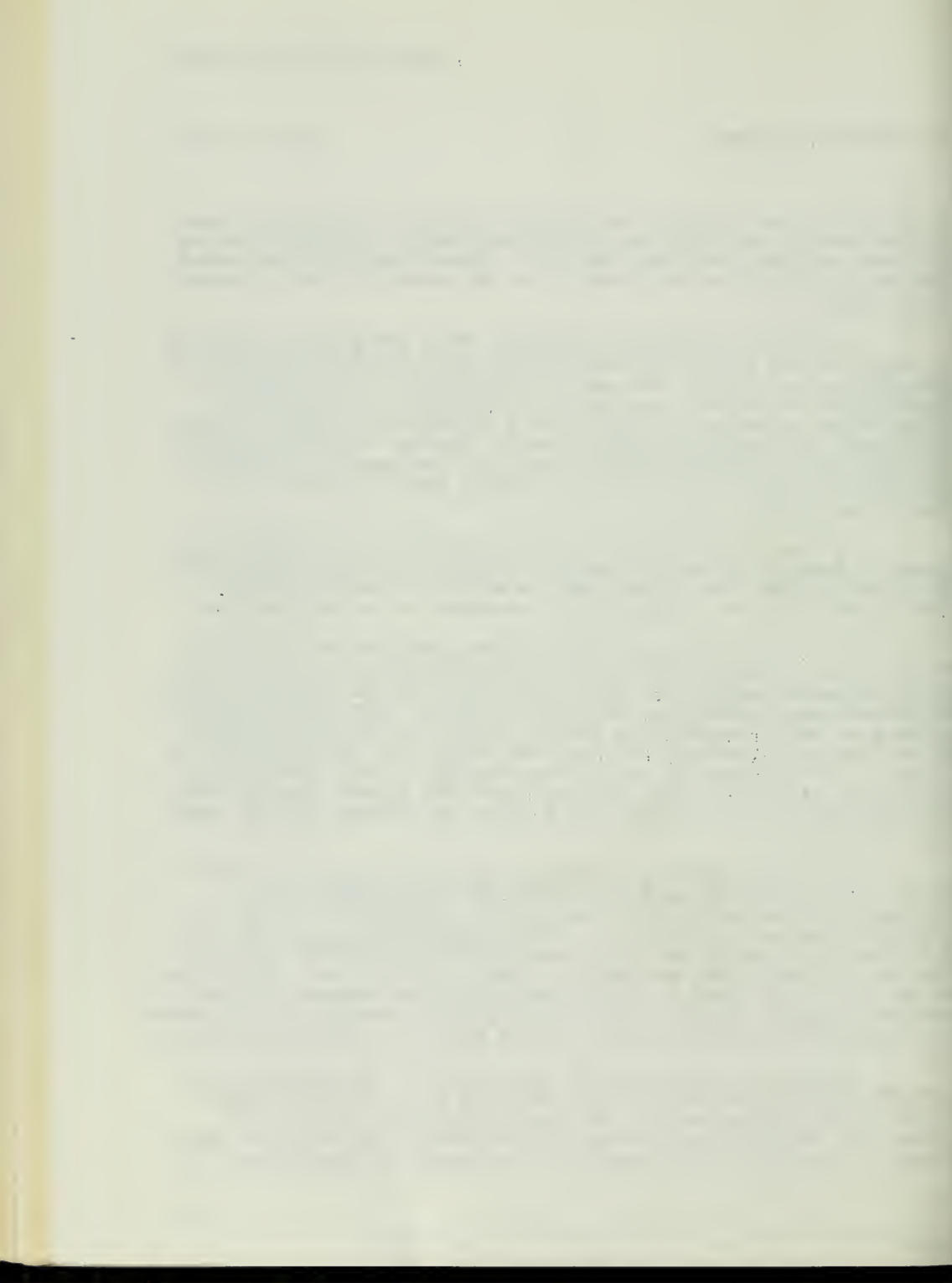
The last paragraph of Section 80 of the Charter relating to supplemental appropriations provides that surpluses created or existing in any fiscal year may be appropriated by the Board of Supervisors at the last meeting of the Board in any month by means of an ordinance designated as a supplemental appropriation ordinance. In Opinion No. 1202, dated October 23, 1957, the City Attorney advised the Controller that the last meeting provision was directory and that such appropriation could be made at any meeting in a month.

It is to be noted that the provisions of the last paragraph of Section 80 do not require that the appropriation be made in a month within the fiscal year in which the surplus exists. Your first question is accordingly answered in the affirmative.

2. The provisions of the first paragraph of Section 80 require that unused and unencumbered appropriations or unencumbered balances existing at the close of any fiscal year in revenue or expense appropriations for any such fiscal year, exclusive of revenue or money required by law to be held in specific funds or to be devoted exclusively to purposes other than annual appropriations, be transferred by you at the closing of such fiscal year to surplus after provision has been made for a cash reserve fund. Such surplus is to be taken into account as revenue for the ensuing fiscal year.

The terms "at the close" and "at the closing" as used in Section 80, refer to the act of audit and settlement of the accounts for the particular fiscal year. (Webster's New International Dictionary, 2d Ed., p. 506; United States v. Cash, 293 Fed. 584.) At that time it is incumbent upon you under the provisions of Section 80, as well as under the provisions of Sections 64 and 65 of the Charter, to determine what are unused and unencumbered appropriations or unencumbered balances which may be taken into account as surplus and as revenue for the ensuing fiscal year.

Under the provisions of Section 86 of the Charter, each certification by you must be recorded and each sum so recorded shall be an encumbrance for the purpose certified until such obligation is fulfilled, canceled or discharged or until the ordinance or resolution is repealed by the Board of Supervisors.



Mr. Nathan B. Cooper

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July 15, 1969

When such a certification exists at the time you are making the determinations required to be made by you for the closing of the fiscal year and there has been no action by the Board of Supervisors on the ordinance which was the subject of the certification, it is my opinion that it is your duty to determine whether or not your certification should be continued or canceled in order that you may properly fulfill your functions and properly determine the financial condition of the City and County under the provisions of Sections 64, 65 and 80 of the Charter. If, as a result of your inquiry, you determine that no action is being taken on the appropriation ordinance and that your certification should be canceled, you may legally proceed to cancel the certification and consider such funds as surplus to be taken into account in accordance with the provisions of Section 80 of the Charter.

You are so advised.

Very truly yours,

TJB

THOMAS M. O'CONNOR
City Attorney



August 1, 1969

Thomas J. Cahill, Chief
San Francisco Police Department
850 Bryant Street
San Francisco, California 94103

Attention: Captain William J. O'Brien
Director of Personnel

Subject: Charter §35.5.1 - Certification by Civil
Service Commission of Rate of Compensation
to be Paid Police Officers or Patrolmen

Dear Chief Cahill:

This is in response to your letter of July 28, 1969 in which you request an opinion interpreting Charter Section 35.5.1 as it relates to the certification of rates of compensation to the Board of Supervisors by the Civil Service Commission.

The facts upon which this opinion is based are contained in your letter and are substantially as follows: Pursuant to Charter Section 35.5.1 the Civil Service Commission shall survey and certify to the Board of Supervisors rates of compensation paid police officers or patrolmen employed in the respective police departments in all cities of 100,000 population or over in the State of California, and the Board of Supervisors shall have the power and duty by ordinance to fix the rates of compensation. The Charter section further provides:

"The rates of compensation fixed in said ordinance,

"(a) for the fourth year of service and thereafter for police officers, police patrol drivers and women protective officers shall not exceed the highest rate of compensation paid police officers or patrolmen in regular service in the cities included in the certified report of the civil service commission; . . ."

The City of Berkeley, California, one of the cities used in the survey by the Civil Service Commission, has a classification of Senior Patrolman which is attained after four years of service by any patrolman in regular service who participates in the departmental incentive program by completing fifty hours of approved off-duty classroom or field activity annually. A Senior Patrolman



Thomas J. Cahill

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August 1, 1969

receives a salary that is approximately five percent above that of a patrolman.

Your letter further states that the duties of a Senior Patrolman of the City of Berkeley are the same as the duties of a patrolman of the City of San Francisco.

Charter Section 35.5.1 states as follows:

"The term 'police officers or patrolmen' as used in this section shall mean the persons employed in the police departments of said cities of 100,000 population or over or of the City and County of San Francisco, to perform substantially the duties being performed on the effective date of this section by police officers, police patrol drivers and women protective officers in the San Francisco Police Department."

You ask whether the rate of compensation paid the classification of Senior Patrolman of the City of Berkeley must be included in the certification to the Board of Supervisors by the Civil Service Commission.

Charter Section 35.5.1 defines rates of compensation as follows:

"The expression 'rates of compensation,' as used in this section in relation to said survey, is hereby declared to apply only to a basic amount of wages, with included range scales, and does not include such working benefits as might be set up by any other city by way of holidays, vacations, other permitted absences of any type whatsoever, overtime, night or split shift, or pay for specialized services within a classification or rank, or other premium pay differentials of any type whatsoever. The foregoing enumeration is not exclusive, but it is the intent of this section that nothing other than a basic amount of wages, with included range scales, is to be included within the meaning of 'rates of compensation.'"

The specific question is whether the rate of compensation of Senior Patrolman in the City of Berkeley includes a "premium pay differential" within the meaning and intent of Charter Section 35.5.1.

The decision of the court in Hegarty v. Soher (1961)

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Thomas J. Cahill

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August 1, 1969

190 Cal.App.2d 509, construed the meaning of "basic amount of wages" and "a premium pay differential" under Section 35.5.1 of the Charter. The City of Los Angeles had enacted a procedure in its Salary Standardization Ordinance which provided for longevity pay for members of its police and fire departments. It provided for increases after 10, 15 and 20 years' service above the rate fixed in the ordinance as the maximum rate for the class. The ordinance further stated that the longevity pay was compensation in addition to the regular salary prescribed for his class and that it was deemed to be a privilege earned by merit and not a right. The court held that the longevity pay was not a "basic amount of wages" as that term is used in the governing definition of "rates of compensation" expressed in section 35.5.1 of the San Francisco Charter, but was in the nature of a premium pay differential and although not enumerated in that section, it was included in the phrase "or other premium pay differentials of any type whatsoever."

The "rates of compensation" as used in Section 35.5.1 apply only to the basic amount of wages. The Hegarty decision held that longevity constituted a premium differential over and above the basic amount of wages. In my opinion the current situation can be distinguished from the situation passed on by the court in the Hegarty decision. In the instant case the classification of Berkeley's Senior Patrolman has only a basic amount of wages attached to it; there is no premium added to the classification. There is no question of premium pay involving longevity. In my opinion the participation in an incentive program can and should be considered as a qualification to make one eligible for the basic wage of Senior Patrolman under the Berkeley system. Analogous is the completion of two years in an accredited college or university as a qualification to make one eligible for the classification Patrolman.

There is no requirement contained in Charter Section 35.5.1 that the Civil Service Commission must determine that the qualifications for classifications are the same; the only determination that need be made is that the persons employed perform substantially the same duties.

If the finding is made that the classification Senior Patrolman of Berkeley and Patrolman of the City and County of San Francisco perform substantially the same duties, then, in my opinion, the basic amount of wages paid Senior Patrolman must be certified to the Board of Supervisors.

The Board can then review the survey and determine

Thomas J. Cahill

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August 1, 1969

Whether under all the circumstances the rate of compensation for a Patrolman in San Francisco shall be the same as, or in some amount less than, the rate of compensation for Senior Patrolman in the City of Berkeley, in the exercise of its powers to provide by ordinance that the rate of compensation shall not exceed the highest rate of compensation included in the certified report of the Civil Service Commission.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

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THE JOURNAL OF THE
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July 17, 1969

Honorable John A. Ertola
President of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Declaration of Policy by Electorate
Respecting Redevelopment Matters

Dear Supervisor Ertola:

Your letter inquiring whether the following declaration of policy may be placed on the November ballot has been received. The declaration reads:

"It is the policy of the electorate that the Board of Supervisors shall not approve any redevelopment, renewal or rehabilitation program, wherein the power of eminent domain could be employed to condemn private property, when such condemned property could, by existing ordinances or statutes, be transferred by sale or otherwise inure to the ownership of another individual, partnership or corporation, unless such proposal shall first be approved by a majority vote of the voters voting thereon at the election."

While this office has until recently concluded that it would be improper to submit such matters to the voters for a declaration of policy, since the decision in Farley v. Healey, 67 C. 2d 325, several matters have been so submitted. (City Attorney's Letter Opinion No. 68-15.)

The City and County of San Francisco, acting under the California community redevelopment law, acts as a state agency, functioning under the state law to fulfill state purposes and is not acting pursuant to its fundamental law to effect solely municipal objectives. In pursuing state objectives, it is governed by the state law and may exercise only such powers vested or recognized by that law. Fellom v. Redevelopment Agency, 157 C.A. 2d 243 (1958), appeal dismissed, 358 U.S. 56; Housing Authority

ROYAL SOCIETY OF MEDICINE

Volume 10, Part 1, 1915
The Journal of the Royal Society of Medicine, founded in 1825, is the principal organ of the Society, and contains original researches, clinical reports, and reviews of the progress of medicine.

The Journal is published quarterly, and is sent to all members of the Society free of charge. It is also available for purchase by non-members at a special price.

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Honorable John A. Ertola

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July 17, 1968

v. City of Los Angeles, 38 C. 2d 853 (1952), appeal dismissed, 344 U.S. 836; Housing Authority v. City Council, 208 C.A. 2d 599 (1962).

The California Health and Safety Code provides inter alia:

§33391. "Within the survey area or for purposes of redevelopment an agency may:

"(b) Acquire real property by eminent domain."

See also §§33393 and 33395.

Upon the preparation of the redevelopment plan the agency is required to submit it to the Board of Supervisors for action (§33351 H & S Code).

§33367. [Contents of ordinance adopting plan.] "The ordinance shall contain:

"(d) The findings and determinations of the legislative body that:

"(6) The condemnation of real property, if provided for in the redevelopment plan, is necessary to the execution of the redevelopment plan and adequate provisions have been made for payment for property to be acquired as provided by law."

When a plan is considered in its entirety, it is obvious that in all probability title to the entire area could not be acquired by negotiation and voluntary sale to the agency and that condemnation of at least part of the area would be necessary. Thus to refuse the power of condemnation would, in effect, prohibit the carrying out of the plan. Sanguinetti v. City Council of Stockton, 231 C.A. 2d 813, 818-819 (1965).

This office has in the past advised that matters affecting redevelopment may not be submitted to the voters for a declaration of policy prior to the adoption by the city of any matter respecting redevelopment and the Board of Supervisors has been so advised. (City Attorney Opinions 65-23-A and 65-19-A.) Under such prior opinions the subject matter of the proposed declaration of policy would not be appropriate for submission to the voters and my advice would be that the Board of Supervisors should not take the procedural steps necessary to place such a declaration of policy on the ballot.

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, VOL. 10, PART 1, 1900.

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, VOL. 10, PART 1, 1900.

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THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, VOL. 10, PART 1, 1900.

Honorable John A. Ertola

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July 17, 1969

In Farley v. Healey, 67 C. 2d 325 (1967), involving a declaration of policy respecting and urging an immediate cease fire and American withdrawal from Vietnam, the court stated at page 327:

"It is not his function [Registrar of Voters] to determine whether a proposed initiative will be valid if enacted or whether a proposed declaration of policy is one to which the initiative may apply. These questions may involve difficult legal issues that only a court can determine. The right to propose initiative measures cannot properly be impeded by a decision of a ministerial officer, even if supported by the advice of the city attorney, that the subject is not appropriate for submission to the voters."

The court further said at page 329:

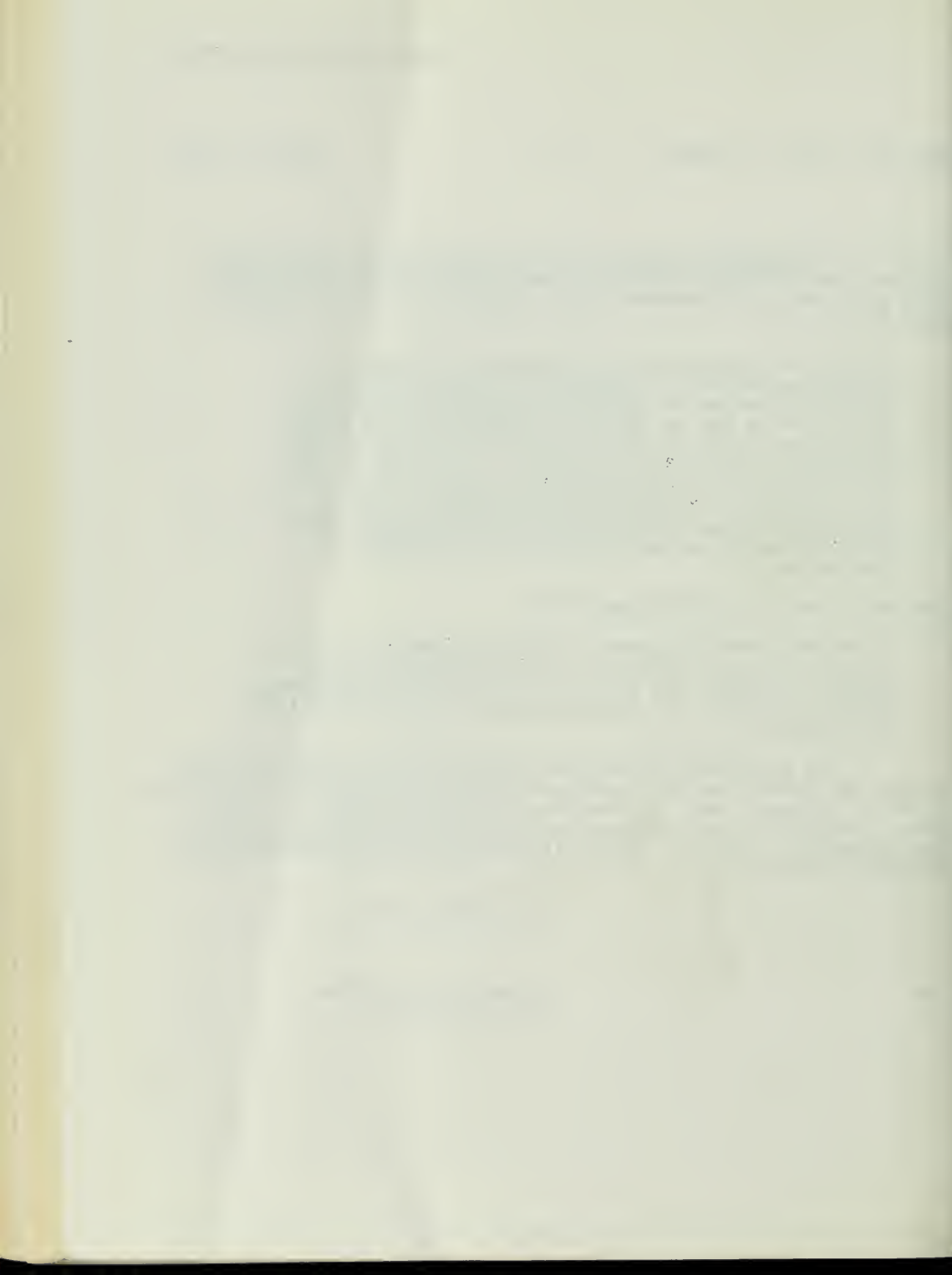
"The fact that the board's duty 'to carry . . . into effect' approved policies is inoperative when the policy is beyond the power of the board to effectuate, affords no basis for restricting the right to declare the policy."

You are therefore advised that while the Board of Supervisors may submit the declaration of policy proposed to the voters, it is my judgment that the board may not validly adopt an ordinance pursuant to such declaration of policy. Andrews v. City of San Bernardino, 175 C.A. 2d 459 (1959); petition for hearing by Supreme Court denied.

Very truly yours,

RJH

THOMAS M. O'CONNOR
City Attorney



July 21, 1969

Mr. George J. Grubb
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Re: Vacation-Holiday Benefits for Employees Subject
to Section 151.3 of the Charter Where Such
Benefits Have Not Been Included in the Annual
Salary Standardization Ordinance.

Dear Mr. Grubb:

This is in reply to a request for an opinion as to what legal steps, if any, may be taken with reference to paying certain city employees the increased vacation-holiday benefits for May and June 1967, which benefits were provided for in a collective bargaining agreement between the private employers and the Building Material and Construction Teamsters Union Local 216. The subject city employees are under the provisions of Section 151.3 of the Charter.

Section 151.3 of the Charter has been interpreted to mean that city employees are entitled to receive the difference, if any, existing between the cash value of fringe benefits provided for in the contract and the cash value of similar fringe benefits provided by the city. (See Martin v. City and County of San Francisco, 158 Cal.App.2d 570.) Holiday benefits provided in collective bargaining agreements constitute a part of the employee's compensation to which city employees are entitled under Section 151.3 of the Charter. (Adams v. Wolff, 84 Cal.App.2d 435.) Vacation rights, however, are governed by Charter and not by the private agreements. (See §151.5, Charter.) Accordingly, whenever a collective bargaining agreement provides a single amount for vacation-holiday benefits, it is necessary to determine the amount allocable to each benefit in order that city employees may receive the cash equivalent allotted to holiday pay.



Mr. George J. Grubb

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July 21, 1969

An examination of the records of the Civil Service Commission shows that the contract which was used for certification purposes for the fiscal year 1966-67 contained a provision that the vacation-holiday benefits would be increased to 35 cents per hour, effective May 1, 1967. When the Salary Standardization Ordinance was enacted for fiscal year 1966-67, neither the union nor the employer had established the breakdown of the value attributed to vacation and to holiday benefits and the ordinance failed to provide for the increase in that rate. Subsequent to adoption of the ordinance and prior to the end of the fiscal year, a breakdown of the 35 cent vacation-holiday benefit was made available but the Salary Standardization Ordinance was not amended to reflect the increase in holiday rate effective May 1, 1967. The Salary Standardization Ordinance for fiscal year 1967-68 contained the proper increase in this holiday rate. Therefore, the subject employees did not receive the increased holiday benefit for May and June 1967.

Section 151.3 of the Charter provides in part:

" . . . whenever any groups or crafts establish a rate of pay for such groups or crafts through collective bargaining agreements with employers employing such groups or crafts, and such rate is recognized and paid throughout the industry and the establishments employing such groups or crafts in San Francisco and the civil service commission shall certify that such rate is generally prevailing for such groups or crafts in private employment in San Francisco pursuant to collective bargaining agreements, the board of supervisors shall have the power and it shall be its duty to fix such rate of pay as the compensations for such groups and crafts engaged in the city and county service."

The provisions of Section 151.3 require that city and county craft employees receive the identical rate of pay as their corresponding craft employees in private industry. While ordinarily it is the responsibility of the employees' representatives to obtain and furnish the breakdown of the benefits to which they are entitled, there was a correlative duty on the part of the Civil Service Commission to inform the Board of Supervisors prior to enactments of the Salary Standardization Ordinance that the collective bargaining agreement provided for a change in rate of pay effective May 1, 1967. Because this information was not communicated to the Board of Supervisors, the Salary Standardization Ordinance for fiscal year 1966-67 was not in compliance with the



Mr. George J. Grubb

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July 21, 1969

requirements of Section 151.3 of the Charter with the result that the subject city employees did not receive the same rate of pay as similar craft employees in private industry. Under Section 151.3 of the Charter, the subject city employees had the right to receive the holiday allowance increase on May 1, 1967, as did employees in private industry and they cannot be deprived of that right because the actual amount of the benefit was unknown at the time that the 1966-67 Salary Standardization Ordinance was enacted. Therefore, it is my opinion that the employees in the classifications covered by the agreement are entitled to the increased holiday allowance provided for in that contract for the months of May and June 1967.

Accordingly, the Civil Service Commission should recommend amendments to the Salary Standardization Ordinance for the fiscal year 1966-67, together with amendments to the Salary Ordinance and the Appropriations Ordinance so that the subject employees will be authorized to receive payment of the increased holiday allowance for May and June 1967.

You are thus advised.

Very truly yours,

MCK

THOMAS M. O'CONNOR
City Attorney



July 22, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Your File No. 137 69-8
BARTD - Diversion of Funds - West Portal Tunnel

Dear Mr. Dolan:

In your letter of July 11, 1969, you have requested that this office advise whether San Francisco may legally request the Bay Area Rapid Transit District to divert funds currently allotted for construction of the West Portal tunnel, or subway, to assist construction of the Davis Street Station, or some other element of the rapid transit facilities to be located in San Francisco.

By my letter of December 27, 1968, I have previously advised that, in my opinion, there is no legal requirement that this portion of the BARTD system be placed underground, and that, hence, readjustment of proposed facilities from underground to surface is not precluded by the terms of the resolution under which the BARTD construction bonds were submitted to and authorized by the electorate in November of 1962. A copy of the said letter is enclosed.

The proposal now under study by the Board of Supervisors would seek the transfer of all construction funds from the West Portal area to the Davis Street station, or other facility in San Francisco. It is my understanding that implementation of this proposal would occasion elimination not only of underground subway construction in the West Portal area, for the distance from the western terminus of Twin Peaks Tunnel to a location south of St. Francis Circle, but would also compel abandonment of plans for a ramp connection to the "L" car line (which would no longer be needed in the absence of subway construction) and for the construction of a station at Vicente Street. The net effect of the



Mr. Robert J. Dolan

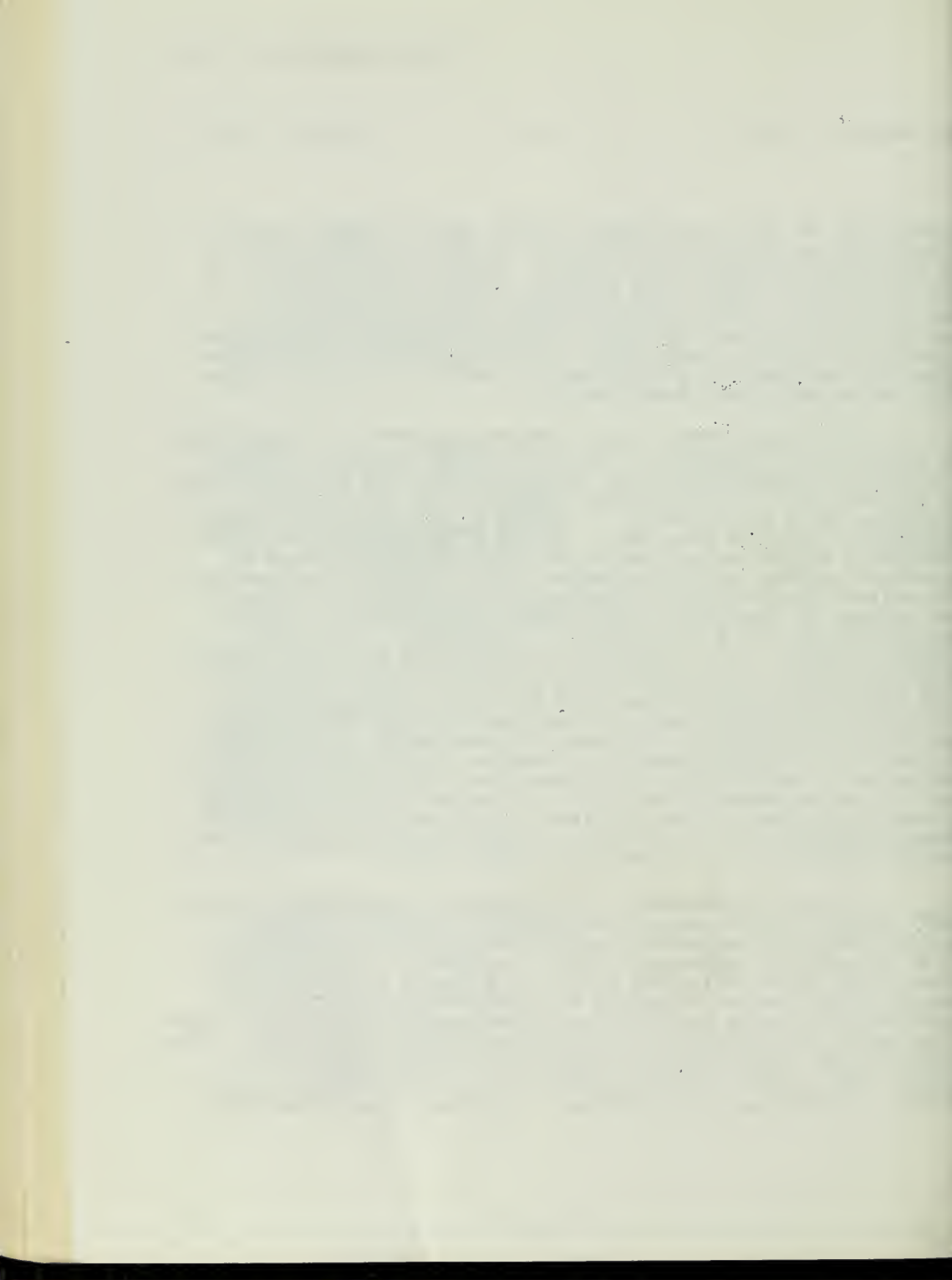
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July 22, 1969

elimination of these facilities would be that no BARTD construction would take place in the West Portal area. Construction to be undertaken by BARTD will, however, extend a single level subway for the use of Municipal Railway transit vehicles from Van Ness Avenue, where it will connect with the double-level subway structure eastward on Market Street, westward to the eastern entrance of the Twin Peaks Tunnel, with appropriate ramp connections and stations and an entrance structure to bring the subway into the existing Twin Peaks Tunnel.

The significant legal question presented by these facts is whether the elimination of the West Portal portion of BARTD construction violates the rule "that proceeds of a bond issue may be expended only for the purpose authorized by the voters in approving issue of the bonds." (Mills v. S.F. Bay Area Transit District, 261 C.A.2d 666, 668.) As the Mills case points out in describing the effect of Resolution 231 of the BARTD board of directors calling the bond election, "the proposition printed on the ballot described only in the most general terms its object and purpose of 'acquiring, constructing and operating a rapid transit system' * * *." (261 C.A. 2d at 668.) While the Composite Report which preceded the adoption of the bond resolution specifically described subway and station facilities in the West Portal area, the language and holding of the Mills case, previously discussed, makes it clear that the Composite Report was, under the operative statutes governing BARTD, only designed "to enable the (BARTD) board to determine the feasibility of the project as a whole" (Public Utilities Code, §§ 29151 and 29152), and "cannot be deemed to modify the intentionally broad language of the proposition in fact submitted to the voters, the call of election published to them, and the statutes authorizing the procedure adopted * * *." (261 C.A. 2d 666, 669.)

Thus, to determine if the proposed modification of the BARTD system would create an unauthorized deviation from the system directed to be constructed by the vote of the electorate, it is necessary to consider, first, the terms of the resolution under which the election was called. It should be emphasized, however, that the determination of BARTD's authority to effect such modification in its plans, must necessarily rest in the determination of the BARTD board of directors, pursuant to advice of its legal counsel, and perhaps, ultimately, a determination of the courts. My opinion on this subject must, to this extent, be regarded as preliminary and advisory. The final legal discretion



Mr. Robert J. Dolan

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July 22, 1969

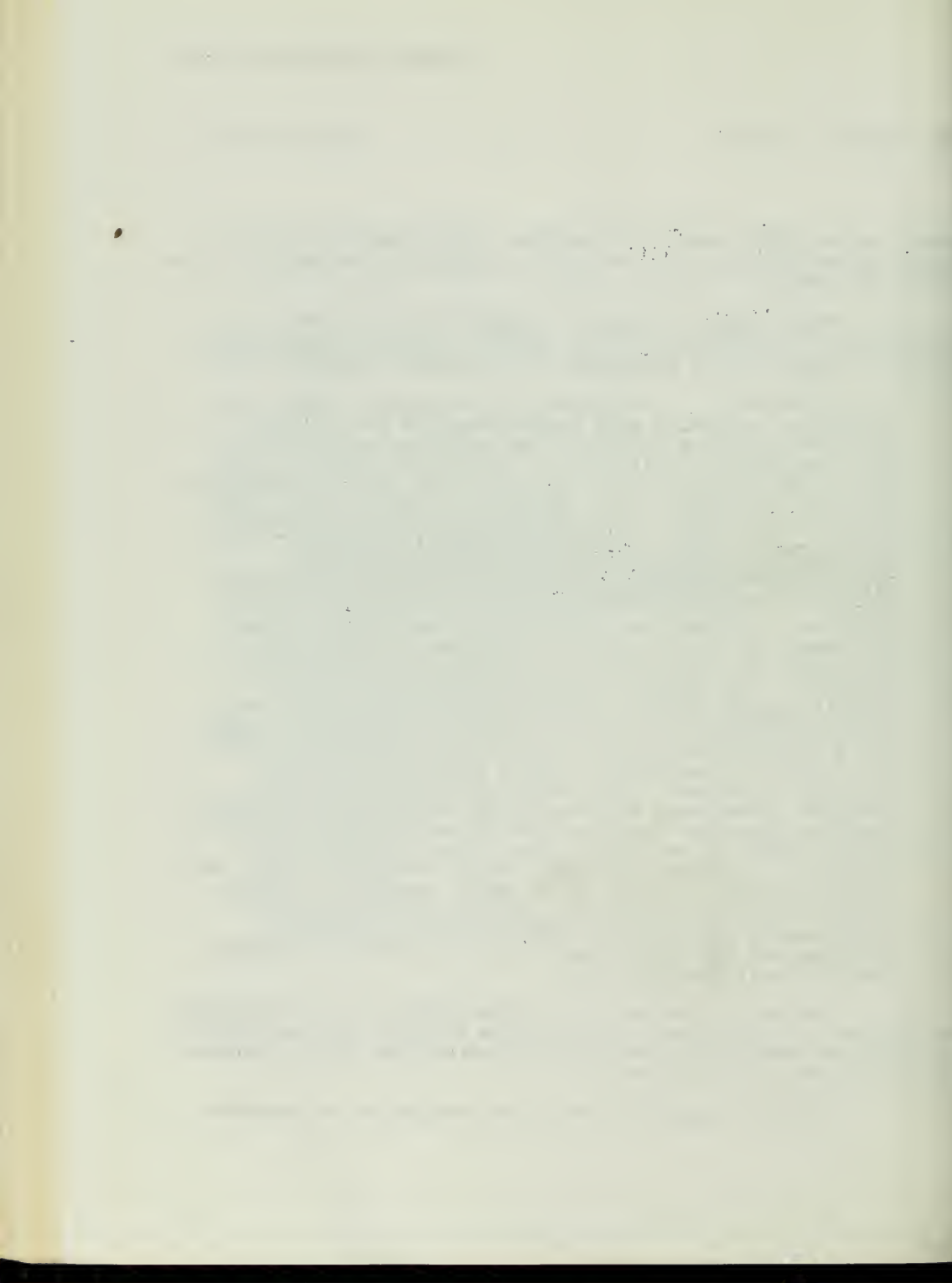
rests in the BARTD board of directors, under Section 29039, et seq., of the Public Utilities Code, as previously explained in the attached letter.

The operative language of BARTD Resolution No. 231, calling the bond election, is as follows, with the underscoring of the language deemed pertinent to the present inquiry:

"Section 2. A statement of the general object and purpose of incurring said indebtedness as set forth in said measure is as follows: By incurring said indebtedness the District will be in a position to acquire, construct and complete a mass rapid transit system connecting the City and County of San Francisco, Alameda County and Contra Costa County. The San Francisco downtown element of the rapid transit system will connect with the San Francisco approach to the Trans-Bay Tube in the vicinity of the Embarcadero and will extend west of Twin Peaks. A connection will be made via a Mission line to Daly City. A Trans-Bay Tube will be constructed by the Department of Public Works of the State of California underneath San Francisco Bay connecting San Francisco and Oakland. The Oakland downtown segment of the rapid transit system will provide direct connection north via a Berkeley-Richmond line to the vicinity of Richmond, east via a Central Contra Costa line to the vicinity of Concord, and south via a southerly Alameda County line to the vicinity of Fremont. This mass rapid transit system includes underground and overground construction, subways, tunnels, passenger stations, off-street parking facilities, lands, rights of way, rail lines, track construction, stations, platforms, switches, yards, terminals, power and control systems, and all other works, property or structures necessary or convenient to provide an integrated three-county rapid transit system for the purpose of carrying out the provisions of the San Francisco Bay Area Rapid Transit District Act."

The ballot proposition as distributed to the voters and as printed on the ballots in use at the election was less specific and did not contain any geographical description of the elements or the extent of the system.

The key language by which the obligation to construct



Mr. Robert J. Dolan

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July 22, 1969

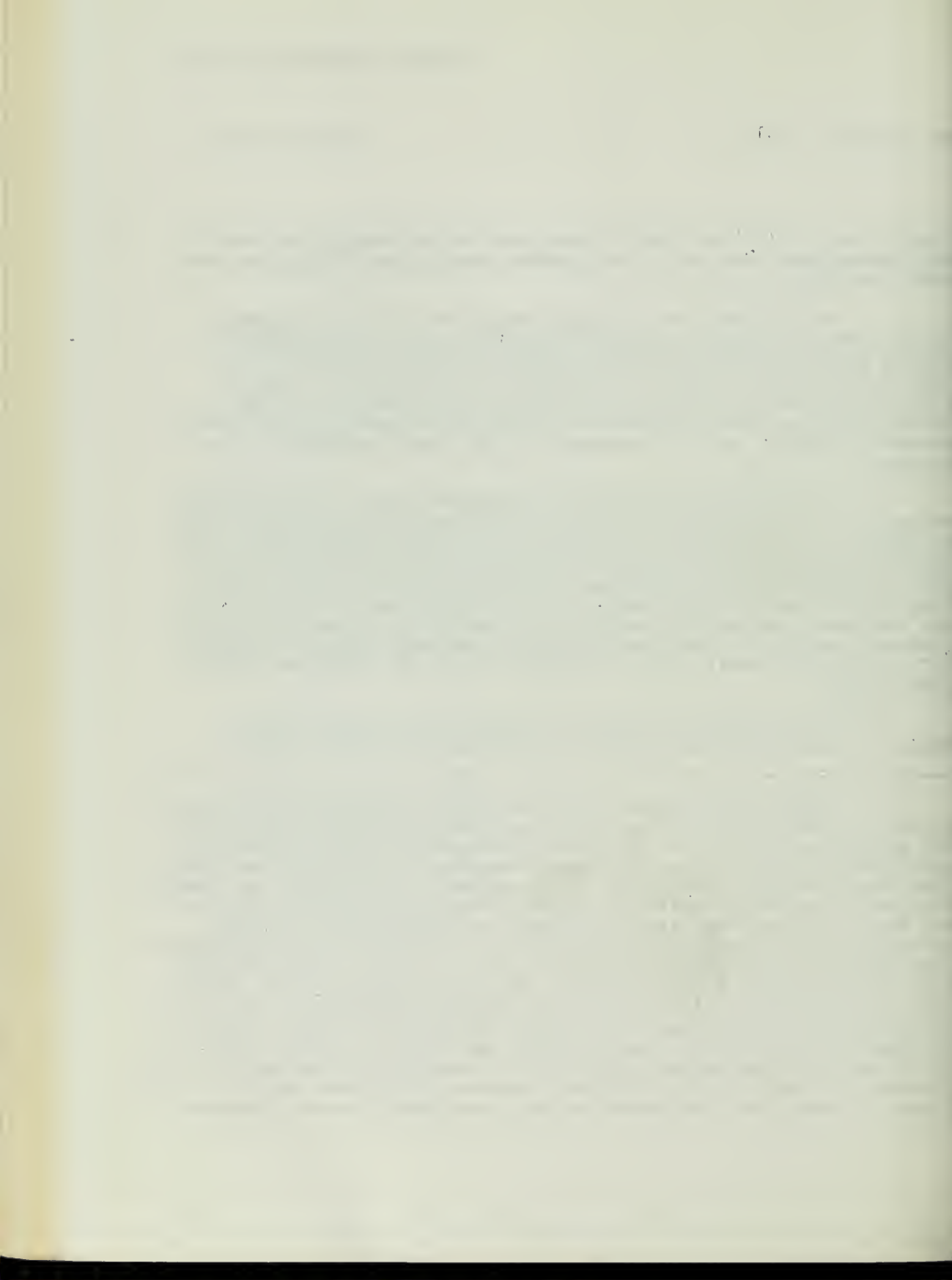
facilities in the West Portal area must be determined is found in the underscored portion of the quoted resolution calling for the bond election.

The underscored language poses the difficult question as to whether the San Francisco element of the rapid transit system will be construed to "extend west of Twin Peaks" if the West Portal BARTD construction should be eliminated. This is a mixed question of fact and law, and, as an attorney, I can merely offer my best judgment as to the determination that would be made by BARTD, or, if necessary in the last instance, by the courts.

As a factual proposition, reconstruction of the eastern entrance to the Twin Peaks Tunnel will integrate such tunnel into, and make it an operative unit of the grade-separated right of way rapid transit system contemplated by the approved BARTD proposal. This integrated system, available for rapid transit use, will in fact extend west of Twin Peaks. It is significant that the joint use and coordination of the BARTD and Municipal Railway systems is contemplated in the San Francisco Bay Area Rapid Transit District Act. See California Public Utilities Code, §§ 29031 and 29034; also §29037.

It is further significant that the printed ballot measure voted on in the election of November 6, 1962,* also

* Shall San Francisco Bay Area Rapid Transit District incur a bonded indebtedness in the principal amount of \$792,000,000 for the object and purpose of acquiring, constructing and operating a rapid transit system for the transportation of passengers and their incidental baggage, including rights of way, rail lines, bus lines, stations, platforms, switches, yards, terminals, parking lots and any and all other facilities necessary or convenient for rapid transit service within or partly without the district, underground, upon or above the ground and under, upon, or over public streets, highways, bridges, tubes, tunnels, or other public ways or waterways, together with all physical structures necessary or convenient for the access of persons and vehicles thereto, including lands, easements, rights to the use or joint use of any or all of the foregoing and all other works, property or structures necessary or convenient to carry out the objects, purposes and powers vested in the District under the "San Francisco Bay Area Rapid Transit District Act"?



Mr. Robert J. Dolan

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July 22, 1969

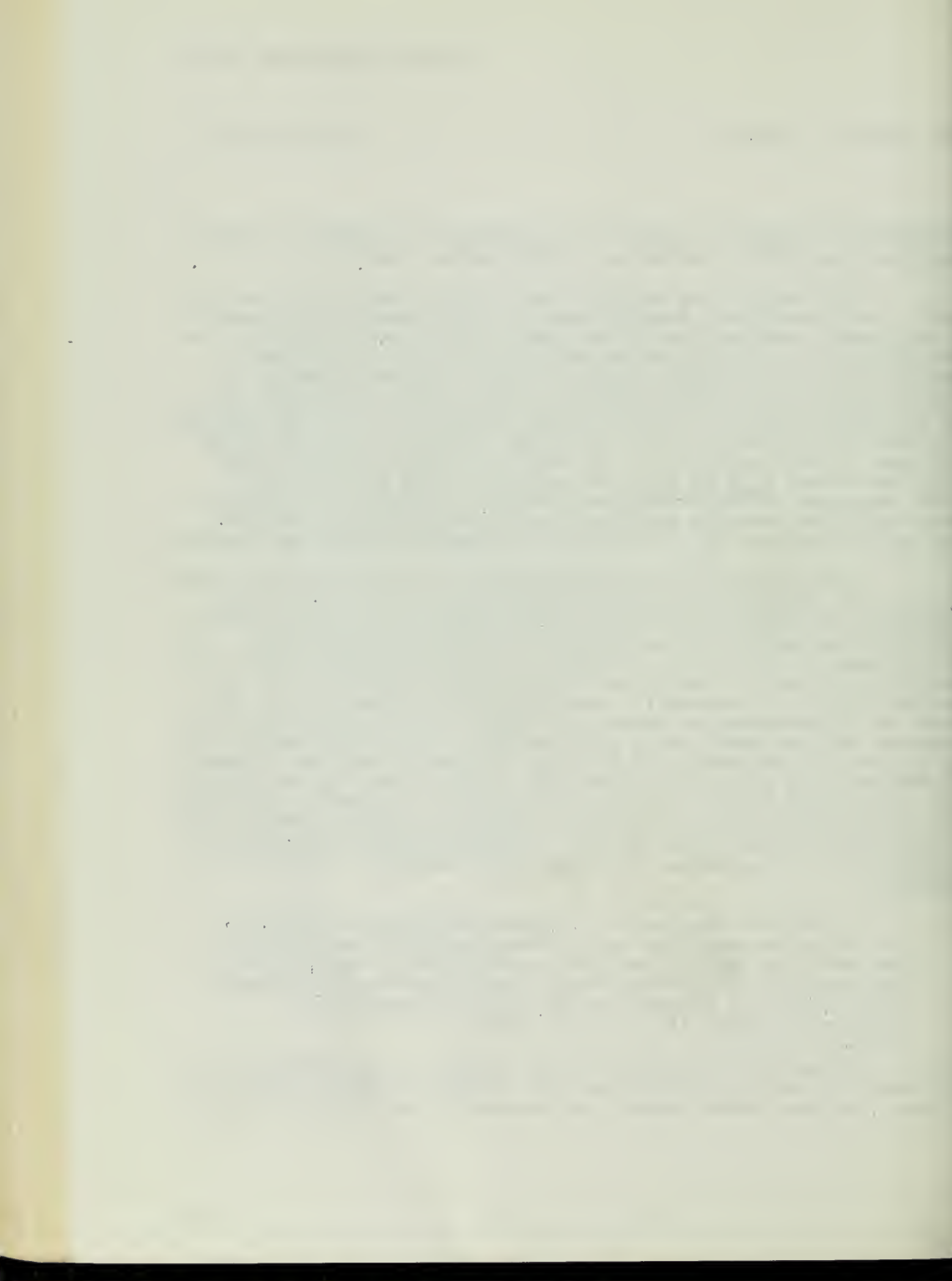
contemplates "rights to the use or joint use" by BARTD of various physical structures, including, specifically, "tunnels."

The contention could be made, to the contrary, that the BARTD system would not "extend" west of Twin Peaks in the absence of any BARTD construction in the area. This construction of the language, in my opinion, takes too narrow a view of the integrated nature of the BARTD system. It is noteworthy that, in the resolution calling the bond election, when a particular branch of the BARTD route is intended to be required to be built, specific language is utilized in the resolution. Thus, in the following sentence of the resolution it is most explicitly provided that "(a) connection will be made via a Mission line to Daly City." Other language in the resolution prescribes connections with the Trans-Bay tube, between San Francisco and Oakland via the tube, and to the vicinity of the Cities of Richmond, Concord and Fremont.

The absence of any requirement as to the area with which the element of the rapid transit system west of Twin Peaks must connect is persuasive of the view that there is no legal mandate for the construction of facilities in the West Portal area. I do not mean, in any sense, however, to imply or suggest that such facilities should or should not be built as a matter of policy, a matter which is of necessity committed to the discretion of the Board of Supervisors, to recommend, subject to the ultimate determination of the BARTD board of directors. As a legal matter, in my opinion the San Francisco downtown element of the rapid transit system would be deemed to extend west of Twin Peaks by the fact of the integration of the Twin Peaks tunnel into the BARTD rapid transit system and by the fact that such tunnel, so integrated, would extend west of Twin Peaks as part of the integrated system. Such construction is consistent with the legal meaning of the word "system":

"The word 'system' * * * means an organized plan or scheme in keeping with which the constituent parts thereof are rendered similar and are connected and combined into one complete, harmonious whole, and it necessarily imparts both a unity of purpose and entirety of operation."
(Coulter v. Pool, 187 Cal. 181, 192.)

Since the elements of rapid transit to be utilized by the Municipal Railway, throughout the length of Market Street and through the Twin Peaks tunnel, are connected and combined into one



Mr. Robert J. Dolan

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complete operation, extending west of Twin Peaks, the "system" called for by the bond resolution would be constructed without the necessity of physical improvements in the West Portal area.

Without any mandate from the voters requiring the West Portal construction, the rule mentioned in the Dellums case (discussed in my previous letter), does not apply to the facts under discussion. In the present situation, there was no commitment to the voters on which they were entitled to rely, i.e., as a part of the bond election procedure, that facilities be built in the West Portal area.

Likewise, cases such as O'Farrell v. County of Sonoma, 189 Cal. 343, involving deviation from a bond issue requirement to build a road of specific length, are similarly inapplicable, in the absence of any such commitment.

For these reasons, I am of the opinion that the omission of approximately one-half mile of construction in the West Portal area falls under the rule of permissible changes in the BARTD system enunciated in the Mills case:

"In the wide scope of this substantial transit project, the deviation of 1 1/2 miles in location of a single station is but a minor change in the tentative plan which was relied upon only to forecast feasibility of the project as a whole." (261 C.A. 2d, at 669.)

It is, in my opinion, for these reasons appropriate for the Board of Supervisors to consider, under Public Utilities Code §29039, the question of whether it will request the BARTD board of directors to apply West Portal construction funds to the development of the Davis Street Station or other elements of the rapid transit system to be constructed by BARTD within the City.

Yours very truly,

RMD

THOMAS M. O'CONNOR
City Attorney



July 23, 1969

Mr. William Becker, Director
Human Rights Commission of San Francisco
1095 Market Street
San Francisco, California 94103

Subject: Application of "Brown Act" to Meetings
of the Human Rights Commission

Dear Mr. Becker:

This is in response to your letter of June 30, 1969, in which you inquire into the present application of the Brown Act to meetings of committees of the Human Rights Commission.

The "Brown Act" (Gov. Code §§54950-54960, inclusive) provides in general that all meetings of the legislative body of a local agency, including the legislative body of school districts, chartered cities and municipal corporations (§54951) shall be open and public.

Section 54952 defines the "legislative body" of a local agency to include any board or commission of the governing body. Section 54952.5, added in 1961, extended the definition of "legislative body" so as to include all permanent boards or commissions of a local agency. Section 54952.3, added in 1968, further extended the definition of "legislative body" so as to include advisory commission, advisory committee or advisory body of a local agency.

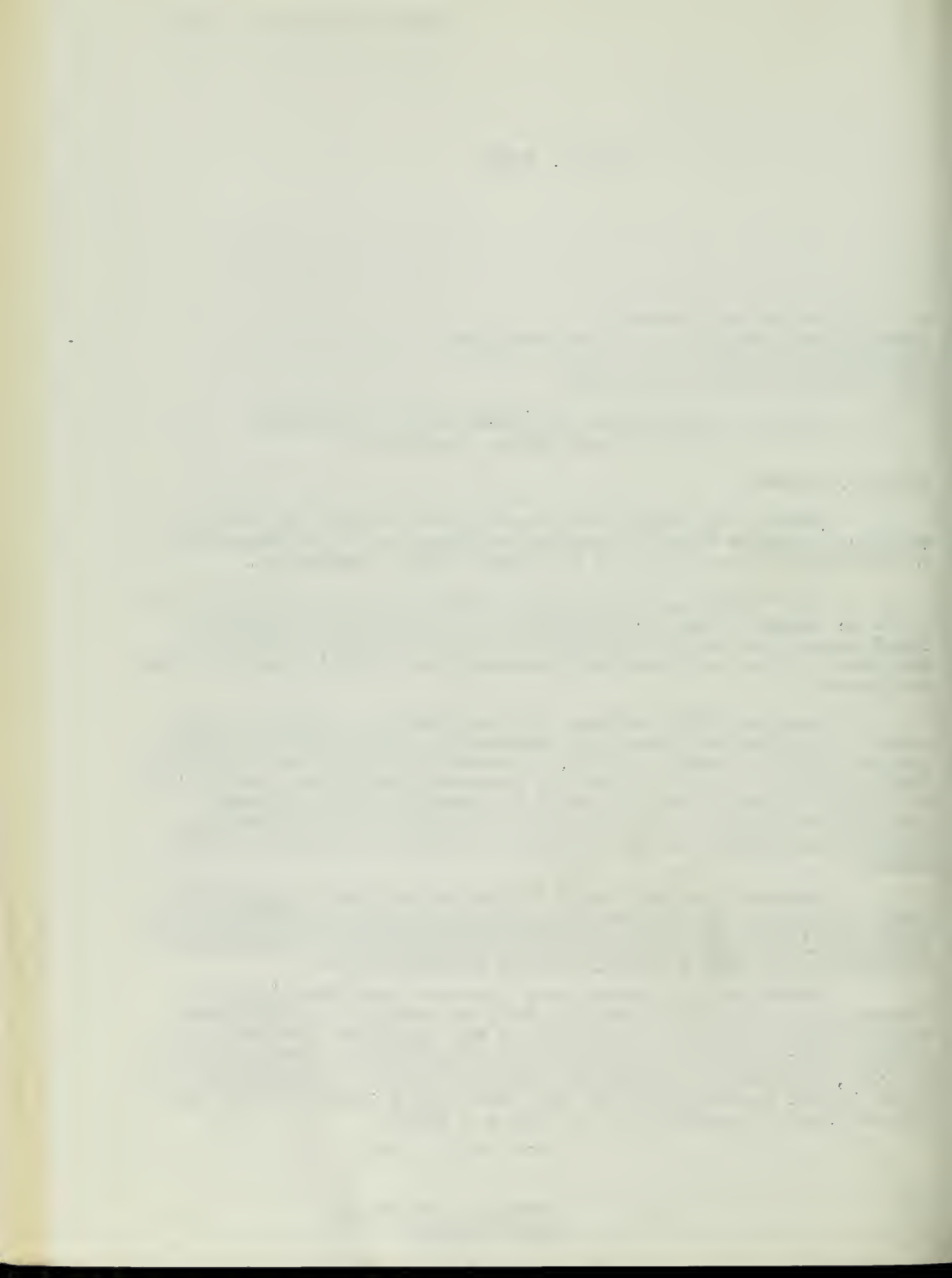
However, Section 54952.3 also states that "Legislative body" as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body.

Therefore, to answer your question specifically, the "Brown Act," as amended, applies both to meetings of the Human Rights Commission and to meetings of any committee thereof and requires that such regular or specific meetings be open and public. However, meetings of committees composed solely of members of the Human Rights Commission which are less than a quorum of the Commission are not required to be open and public.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney



July 31, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Execution of Contract for Federal
Planning Grant for Comprehensive City
Demonstration Program; Effect Upon
Proposed Mission Model Neighborhood
Program

Dear Mr. Dolan:

This is in response to your letter of July 25, 1969, wherein you advise that the Finance Committee has for its consideration a resolution approving and authorizing execution of the above captioned contract and has taken the matter under advisement pending receipt of my opinion as to whether or not execution of said contract would in any way commit the City to a Mission Model Neighborhood Program.

Section 104 of the Demonstration Cities and Metropolitan Development Act of 1966 authorizes the Secretary of Housing and Urban Development to make grants to, and contract with city demonstration agencies to pay 80 per centum of the costs of planning and developing comprehensive city demonstration programs provided, inter alia, the application for such assistance has been approved by the local governing body of the city.

Section 103 of the same Act provides that a comprehensive city demonstration program (such as the Mission Model Neighborhood Program) is eligible for assistance only if, inter alia, the local governing body has approved the program.

In view of the foregoing, it is my opinion that pursuant to Section 104 of the Act, the Board of Supervisors of the City and County of San Francisco must specifically approve any comprehensive city demonstration program for the City and County of San Francisco and this would include a Mission Model Neighborhood

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Mr. Robert J. Dolan

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July 31, 1969

Program, in order that said program be eligible for federal financial assistance, and that approval of the execution of a contract for a planning grant pursuant to Section 104 of said Act would neither suffice as approval of a program nor commit the City to approval of said program.

Very truly yours,

JJS

THOMAS M. O'CONNOR
City Attorney



August 4, 1969

Ellis D. Sox, M.D.
Director of Public Health
101 Grove Street
San Francisco, California 94102

Subject: Effect of Law Prohibiting Services of
Psychiatric Technicians Unless Licensed

Dear Dr. Sox:

You have asked what will be the effect of Section 4540 of the Business and Professions Code on city employees now classed as 2304 Psychiatric Orderly.

Section 4540 of the Business and Professions Code provides that no person shall perform the services described in Section 4502 of the Business and Professions Code without a license after January 1, 1970.

Section 4502 states:

"As used in this chapter, 'psychiatric technician' means any person who, under the direction of a licensed physician or psychiatrist or a registered professional nurse, performs services in caring for and treatment of the mentally ill, emotionally disturbed, or mentally retarded for compensation or personal profit, which services:

"(a) Involve responsible nursing and therapeutic procedures for such mentally ill or mentally retarded patients requiring interpersonal and technical skills in the observation and recognition of symptoms and reactions of such patients, and the accurate recording of the same, and the carrying out of treatments and medications as prescribed by a licensed physician or psychiatrist; and

"(b) Require the application of such techniques and procedures as involve understanding of cause and

Ellis D. Sox, M.D.

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August 4, 1969

effect and the safeguarding of life and health of the patient and others; and

"(c) Require the performance of such other duties as are necessary to facilitate rehabilitation of the patient or are necessary in the physical, therapeutic, and psychiatric care of the patient and to require close work with licensed physicians and surgeons, psychiatrists, psychologists, rehabilitation therapists, social workers, registered nurses, and other professional personnel; and

"(d) Nothing herein shall authorize a licensed psychiatric technician to practice medicine or surgery or to undertake the prevention, treatment or cure of disease, pain, injury, deformity, or mental or physical condition in violation of the law."

With respect to Class 2304 Psychiatric Orderly, the characteristics of the position are as follows:

"Under supervision, assists in the care of mentally ill, emotionally disturbed, violent and potentially violent psychiatric patients; observes patients for changes in behavior and takes proper corrective or preventive measures; renders personal care to incompetent and seriously disturbed patients; assists in admitting patients and preparing admission records; and performs related duties as required.

"Requires responsibility for: carrying out existing methods and procedures applicable to the care of psychiatric patients; achieving economies or preventing losses through safeguarding and proper handling and use of materials, supplies and equipment; making occasional contacts outside of the immediate assigned work area with employees and visitors; keeping routine records in connection with admission of patients and their subsequent progress and treatment. Nature of work involves adherence to a number of established procedures requiring exercise of independent judgment, often under emergency conditions, requiring considerable physical effort in controlling or restraining violent patients, with continuous exposure to conditions which may result in accidents or injuries or other disagreeable situations."

Ellis D. Sox, M.D.

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August 4, 1969

Examples of duties of Class 2304 Psychiatric Orderly are:

"1. Assists in admitting mentally ill and disturbed psychiatric patients; prepares and writes admission sheets, record of clothing, valuables and other personal property; obtains required specimens for laboratory analysis; gives baths; takes temperatures, pulse and respiration readings.

"2. Supervises psychiatric patients including those with suicidal or homicidal and alcoholic tendencies; observes patients for signs of change in behavior and takes proper measures to correct situations; prevents patients from using items or objects which might cause injuries to themselves or others.

"3. Assists in administering medications; observes patients following electric shock and insulin shock therapy and reports unfavorable reactions.

"4. Administers to the comfort and well being of patients; cleans those that are incontinent; feeds those unable to feed themselves.

"5. Takes patients to X-ray, dental or other clinics or laboratories as necessary.

"6. Changes and makes patients' beds; keeps room, beds, utensils and equipment clean and orderly."

The characteristics of the position and examples of the duties are taken from the job specifications of the Civil Service Commission for Class 2304 Psychiatric Orderly.

Comparing the services described in Section 4502 with the services described in the job specifications of the Civil Service Commission for Class 2304 Psychiatric Orderly shows them to be almost totally identical. Therefore, in my opinion, after January 1, 1970, city employees employed as Class 2304 Psychiatric Orderlies would be prohibited by Section 4540 from performing the duties set forth in their job specifications unless licensed pursuant to the Business and Professions Code as psychiatric technicians.

In this regard, I call your attention to A.B. 1335, presently pending in the Legislature. That bill amends the

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Ellis D. Sox, M.D.

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August 4, 1969

licensing law as to psychiatric technicians so that any person who presents evidence to the Board of Vocational Nurse and Psychiatric Technician Examiners that he has performed the services described in Section 4502 for a period of not less than two years within the last five years prior to January 1, 1970, shall be granted a license without examination upon application and payment of fees.

Very truly yours,

EAB

THOMAS M. O'CONNOR
City Attorney

August 6, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Re: Authority of Police Commission to Create
Position of Director of Police Community
Relations

Dear Mr. Dolan:

You have asked whether the Police Commission upon the recommendation of the Chief of Police can create the position of Director of Police Community Relations. Your inquiry is prompted by language in Section 20 of the Charter relating to the creation and reduction of positions, "any other provisions of this charter to the contrary notwithstanding."

Section 20 provides that each chief executive appointed by a commission (here Chief of Police) shall have the powers of a department head. That section contains the following provision:

"Each department head may suggest the creation of positions subject to the provisions of this charter, and may reduce the forces under his jurisdiction to conform to the needs of the work for which he is responsible, any other provisions of this charter to the contrary notwithstanding."

Section 143 of the Charter provides:

"Positions in any department or office of the city and county may be created, as provided by this charter, by appropriation ordinance of the board of supervisors. Copy of each such ordinance creating or abolishing positions shall be filed on the approval thereof, with the civil service commission by the clerk of the board of supervisors. Before the appointing officer shall

Mr. Robert J. Dolan

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August 6, 1969

make recommendation for the creation of any new or additional position in any department or office, he shall request and receive from the commission the proper designation and classification of such position based on the duties and responsibilities thereof, and if such position is included in the classified civil service, the commission may, in writing, express to the appointing officer its opinion as to whether or not such position is needed."

Under settled rules of statutory construction, these sections must be construed together giving effect so far as possible to all parts thereof so as to harmonize them and effectuate the legislative intention as expressed therein. (Hanley v. Murphy, 40 Cal. 2d 572, 576.)

Upon analysis, the language of the quoted sections indicates that the department head cannot create any position in his department. He can only "suggest" the creation. The creation of positions can only be done by the Board of Supervisors under the section of the Charter hereinabove mentioned.

Sections 35.1, 35.3 and 35.4 of the Charter provide for the only appointive non-civil service positions in the police department and Section 35.5 specifies the several ranks in the department. None of these sections provide for a Director of Police Community Relations. Accordingly, such a position could not be created in the department as a non-civil service appointive position or as a rank in the department without Charter amendment.

You are advised, therefore, that the position of Director of Police Community Relations may not be created by the action of the Police Commission or by the Chief of Police with the approval of the Police Commission but under existing Charter provisions could only be created by appropriation ordinance of the Board of Supervisors as a civil service position which would not constitute a rank in the department.

Very truly yours,

EAB

THOMAS M. O'CONNOR
City Attorney

August 4, 1969

Mr. Daniel Mattrocce
General Manager
San Francisco City & County Employees'
Retirement System
450 McAllister Street
San Francisco, California 94102

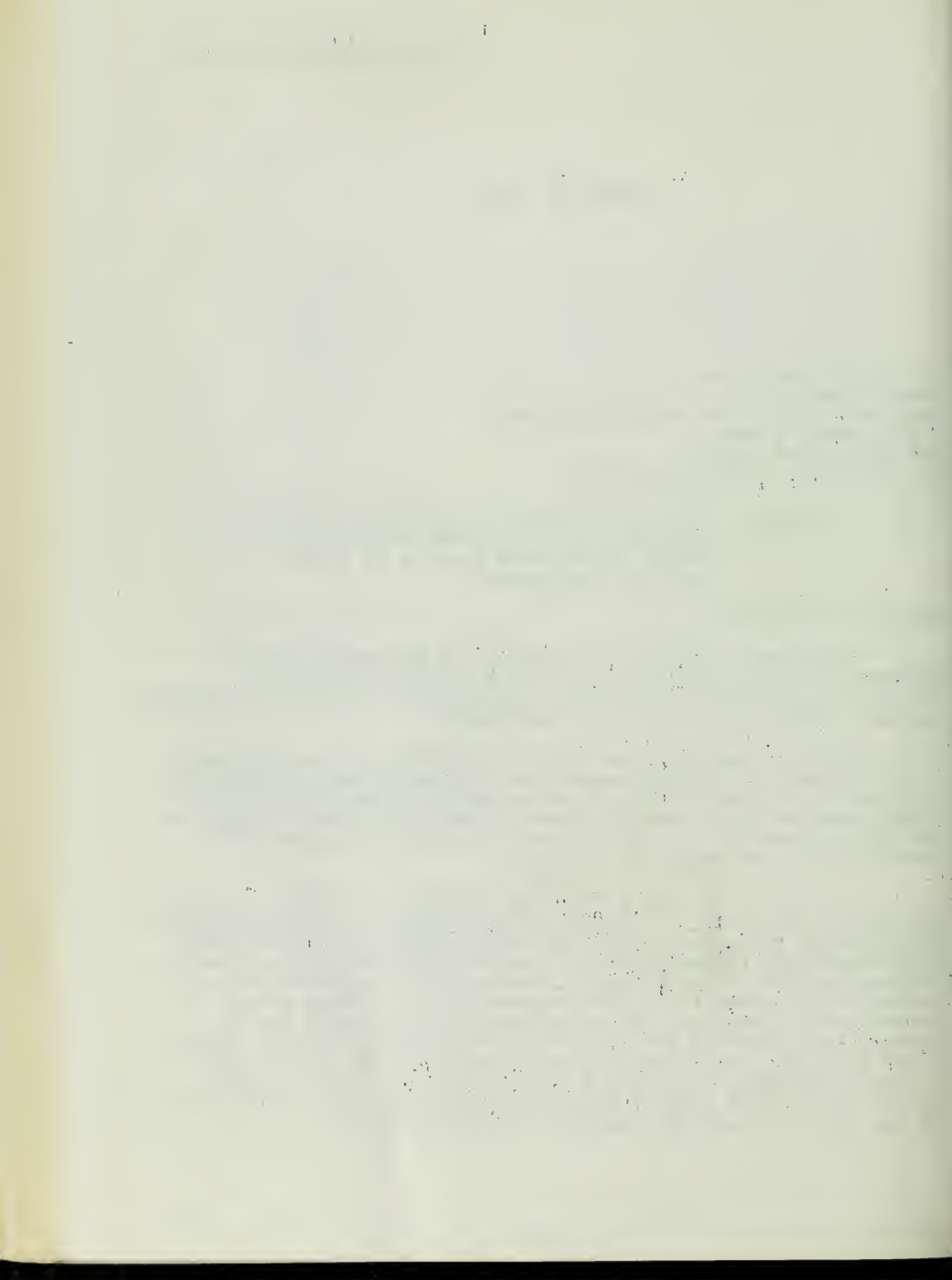
Subject: Effect of Provisions of Charter Section
164.1(A) Upon Allowances Being Paid to
Widows of Deceased Members of Police
and Fire Departments

Dear Mr. Mattrocce:

You have requested my advice as to the percentage of increase which is applicable, pursuant to Charter Section 164.1(A), to payments of allowance being made to widows of deceased members of the Police and Fire Departments.

As you know, Section 164.1(A) provides for the increasing of allowances by varying percentages, the percentage of increase applicable to a particular allowance being determined by "the fiscal year in which said allowance became effective." Therefore, the fiscal year in which the allowance became effective will establish the percentage of increase.

There are various situations in which an allowance becomes payable to the widow of a member of the Police or Fire Department. For example, upon the death of an active member of one of these departments who is qualified for service retirement, an allowance becomes payable to his widow. Likewise, upon the death of such a member as the result of injury received in or illness caused by performance of his duty, an allowance becomes payable to his widow. The effect of Section 164.1(A) in either of these situations is clear, since the only allowance involved is that payable to the widow upon the death of her husband. In each of these cases, "the fiscal year in which the allowance became effective" is the year in which the husband's death occurred.



Mr. Daniel Mattrocce

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August 4, 1969

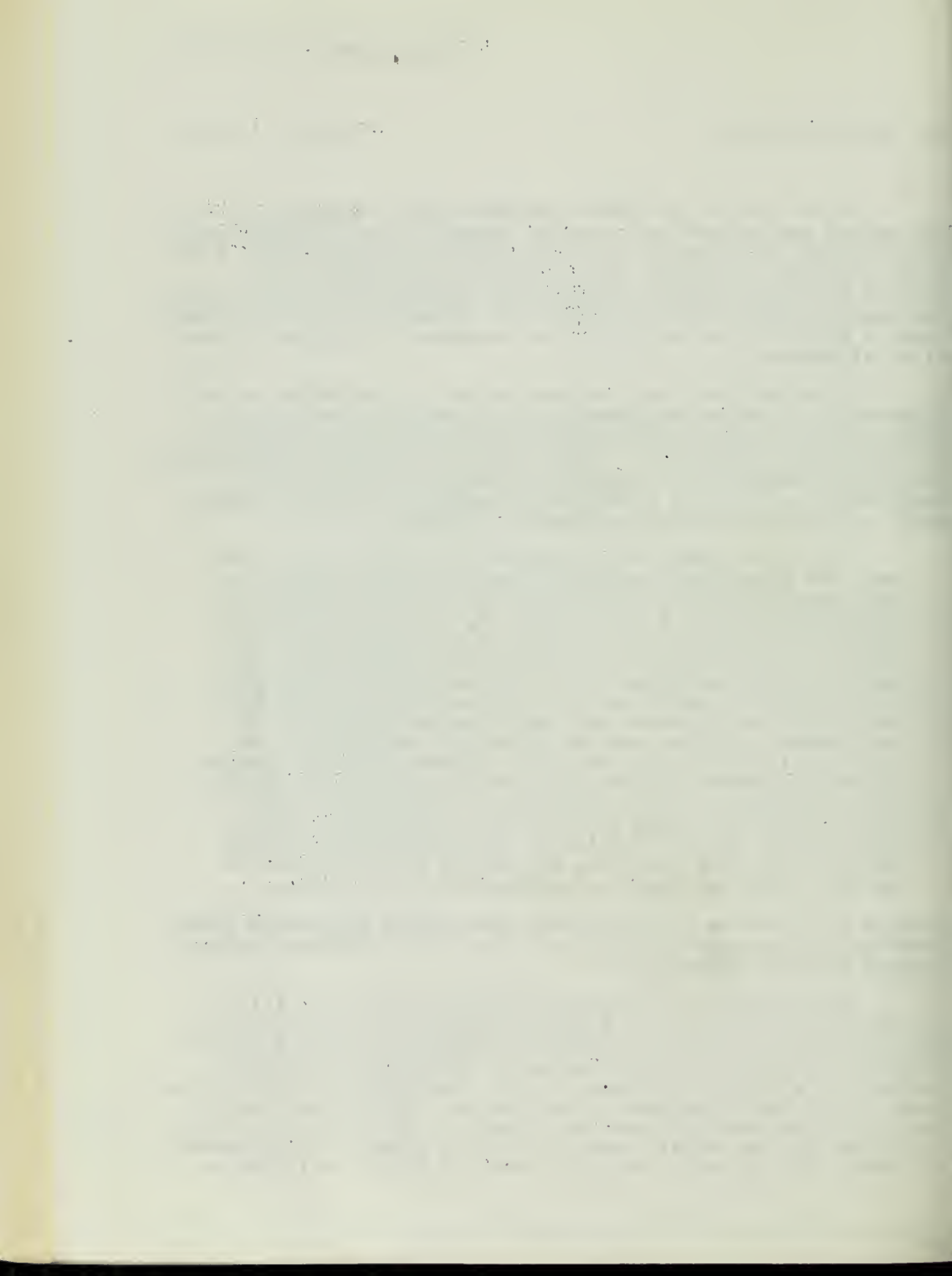
Your request for advice concerns those situations in which the member has retired and received payment of an allowance prior to his death, after which his widow receives an allowance. Your basic question is whether the percentage of increase in the widow's allowance should be determined by the fiscal year in which her husband first began to receive his allowance or by the fiscal year in which he died and his widow commenced to receive payment of an allowance.

Upon the death of a retired member of the Police or Fire Department, his widow may receive an allowance as the result either of an optional modification of her husband's allowance or of "automatic continuance." With respect to optional modification, Charter Sections 168.1.2 (relating to members of the Police Department) and 171.1.2 (relating to members of the Fire Department) contain identical provisions, as follows:

"If, at the date of retirement for service, or retirement for disability resulting from an injury received in performance of duty, said member has no wife, children or dependent parents, who would qualify for the continuance of the allowance after the death of said member, or with respect to the portion of the allowance which would not be continued regardless of dependents, or upon retirement for disability resulting from other causes, with respect to all of the allowance and regardless of dependents at retirement, a member retired under this section, or section 168.1.3 (171.1.3), may elect before the first payment of the retirement allowance is made to receive the actuarial equivalent of his allowance or the portion which would not be continued regardless of dependents, as the case may be, partly in a lesser allowance to be received by him throughout his life, and partly in other benefits payable after his death to another person or persons. . ."

Section 16.75 of the Administrative Code, which implements these provisions of Sections 168.1.2 and 171.1.2, is entitled "Optional Payment Plans of Allowances."

The provisions of Charter Sections 168.1.2 and 171.1.2 and of Section 16.75 of the Administrative Code indicate clearly that, to the extent that the widow's allowance derives from the optional modification of her husband's allowance, there is in reality but a single allowance, to wit, the allowance which became payable upon the retirement of the member. The optional modifications contemplated by these provisions of the Charter and Administrative Code are merely methods by which payment of the husband's allowance will be made. Thus, by means of an optional payment



Mr. Daniel Mattrocce

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August 4, 1969

plan, the husband receives a lesser retirement allowance during his lifetime, the reduction in his allowance being used, on an actuarial basis, to provide benefits for his widow after his death. Consequently, payments made to the widow pursuant to such an optional modification are not a new allowance; they are continuing payments of the allowance which commenced upon the husband's retirement.

Since, in the optional modification situation, the only allowance being paid is the allowance which became payable, that is, "effective," upon the husband's retirement, the words "the fiscal year in which said allowance became effective" as used in Section 164.1(A) refer to the fiscal year in which the husband retired. Consequently, the percentage of increase applicable under Section 164.1(A) to payments of allowance made pursuant to an optional payment plan is determined by the fiscal year in which the husband retired rather than by the fiscal year in which payments to his widow under the optional payment plan commenced.

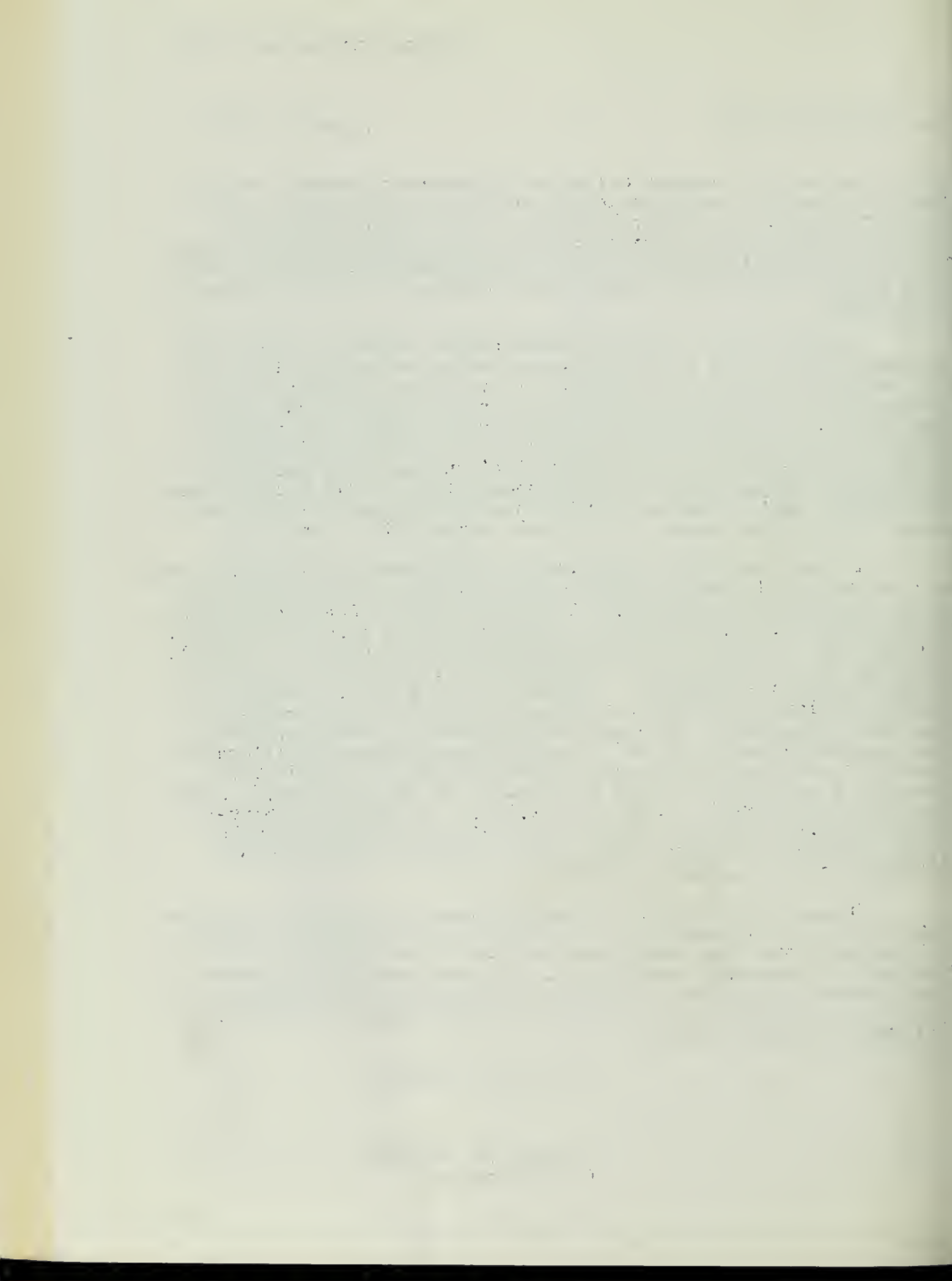
I turn now to a consideration of payments of allowance made to a widow of a deceased member of the Police or Fire Department as an "automatic continuance." The provisions of Charter Sections 168.1.4 and 168.1.5, relating to members of the Police Department, as they were in effect on the effective date of Section 164.1(A), provided for continuation to the widow of either all or one-half of her husband's allowance. Charter Sections 171.1.4 and 171.1.5 contain similar provisions with respect to widows of members of the Fire Department. The payments provided by these provisions are commonly referred to as "automatic continuances" of allowance. You will note that the portion of Section 168.1.2 quoted above contains a reference to "the continuance of the allowance." Similar language is found in Section 171.1.2. In addition, Charter Sections 168.1.10(2) and 171.1.10(2), relating to the contributions required of members, also refer to this continuation of allowance to the member's widow.

From the foregoing, I conclude that the payments of allowance by way of "automatic continuance" to the widow of a member of the Police or Fire Department are but a continuation of the husband's allowance. Consequently, the percentage of increase in such payments pursuant to Section 164.1(A) should be determined by reference to the fiscal year in which the husband's retirement allowance became effective.

Very truly yours,

DJG

THOMAS M. O'CONNOR
City Attorney



August 15, 1969

Mr. Nathan B. Cooper, Controller
Room 109, City Hall
San Francisco, California 94102

Re: Effect of Homeowners' Exemptions on
Assessed Value for Purposes of
Computing Total Bonded Indebtedness

Dear Mr. Cooper:

This is in response to your request for my opinion as to whether the tax exemptions granted by the constitutional and statutory provisions adopted in 1968 relating to homeowners', business inventories and householders' personal property are to be included or excluded in computing the city's bonded indebtedness limitation under the provisions of Section 104 of the Charter.

The pertinent provisions of Section 104 read as follows:

"No bonded indebtedness shall be incurred by the city and county which together with the amount of bonded indebtedness outstanding shall exceed twelve per cent of the assessed value of all real and personal property in the city and county subject to taxation for city and county purposes; . . ."

In the foregoing context the clause "subject to taxation for city and county purposes" qualifies the words real and personal property rather than the words assessed value (see L.L.F. Realty Company v. Fuchs, 75 N.Y.S.2d 356). Accordingly, the determination to be made is whether the property to which the homeowners', business inventory and householders' exemptions attach is subject to taxation for city and county purposes rather than whether the full assessed value of such property is subject to taxation for such purposes.

Originally, the city and county Charter limitation on bonded indebtedness was computed on a percentage of the assessed



Mr. Nathan B. Cooper

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August 15, 1969

value of all real and personal property in the city and county. In 1924 a question arose as to whether the value of certain corporate properties, which under the Constitution could only be taxed for state purposes, should be included in the bonded debt limitation computation. The then City Attorney declined to rule on the question absent a court decision (Opinion #22, 7/28/24) and, accordingly, the Charter was amended to add the qualifying clause "subject to taxation for city and county purposes" to the words "real and personal property" and this language was continued in our 1932 Charter. While the apparent purpose of the amendment was to distinguish between property subject to taxation for city and county purposes and property subject to taxation only for state purposes, and to exclude the latter from the bonded debt limitation computation, the breadth of the language adopted warranted the exclusion from the computation of other types of property enjoying a tax exemption, such as property subject to the church, welfare and veterans' exemptions, and this property has been traditionally so excluded. However, the determining factor in such exclusions is that the exemptions expressly relate to the property involved. Thus, for example, Section 1-1/4 of Article XIII of the Constitution (Veterans' Exemption) provides:

"The property to the amount of \$1,000 . . . shall be exempt from taxation;"

To be distinguished from this language is that of Section 1d of Article XIII (Homeowners' Property Tax Exemption) which reads:

"There is exempt from taxation the amount of \$750 of the assessed value of the dwelling and this shall be known as the Homeowners' Property Tax Exemption."

and that of Section 219 of the Revenue and Taxation Code (Business Inventories Exemption) which reads:

"Business inventories shall be assessed for taxation at the same ratio of assessed to full cash value as the ratio specified in Section 401. After such property has been so assessed, 15% of the assessed value of such property shall be exempt from taxation and such exemption shall be indicated on the assessment roll."

Thus, under these laws the exemption is not of property but rather consists of a tax deduction or credit computed on a portion of assessed value, which credits are subject to replacement revenues by the state. The application of the formula for the tax credit does not reduce the assessed value of the property which remains a constant for the taxable year. Accordingly, the language of Section 104 above quoted requires that in your computation of the bonded debt limitation you include the full assessed value of property subject to the homeowners' and business inventory tax

Mr. Nathan B. Cooper

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August 15, 1969

exemptions as this is real and personal property subject to taxation for city and county purposes.

An opposite conclusion is indicated with relation to the householders' personal property tax exemption. Section 10 $\frac{1}{2}$ of Article XIII of the Constitution provides as follows:

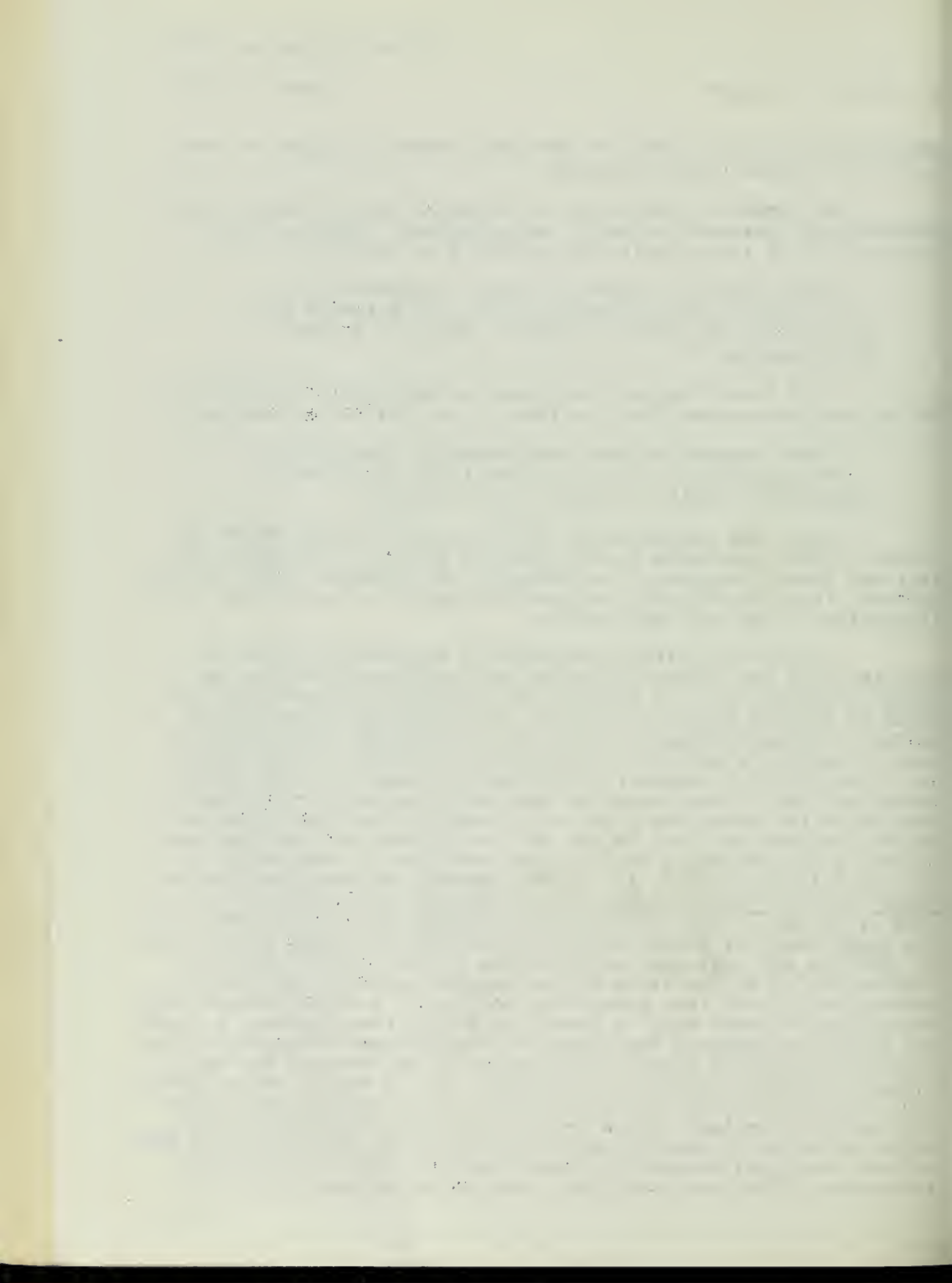
"The personal property of every householder to the amount of one hundred dollars, the articles to be selected by each householder, shall be exempt from taxation."

This Constitutional provision is supplemented by Section 224 of the Revenue and Taxation Code in the following language:

"The personal effects and household furnishings in excess of one hundred dollars (\$100.00) of every householder shall be exempt from taxation."

Here, the exemption is of the property itself which by virtue of such exemption is not property subject to taxation for city and county purposes. Accordingly, the assessed value of such property is to be excluded in your computation of the bonded debt limitation of the city and county.

As far as judicial precedent is concerned, I find the existing case law indeterminate on the question of whether tax exempt property is to be included or excluded in determining the value of taxable property for debt limit purposes, some courts holding that such property should be included and others holding that it should be excluded. (See cases collected and annotated in 30 ALR 2d 903.) However, a fundamental factor in the courts' determinations is the nature of the exemption provided by the particular tax exemption statute or constitutional provision and of the authorities cited in the ALR annotation, the one that considered a tax exemption statute most analogous to Section 1d of Article XIII and Section 219 of the Revenue and Taxation Code was Keene Five Cent Savings Bank v. Lyon County, 90 F. 523 and this case is in accord with the conclusions hereinabove expressed. In the Keene case, by constitutional provision, the legal indebtedness of counties and municipal corporations in the State of Iowa was limited to "5% of the value of the taxable property therein as ascertained by the last preceding tax list." A state statute provided that for each acre of forest or fruit trees planted, a fixed sum should be exempted from taxation on the owner's assessment for a certain number of years -- the amount to be deducted by the assessor from the value of the property -- but not to exceed one-half the value of the realty upon which the exemption was claimed. In practice, the land of the owner was listed and assessed, the number of acres of trees planted was entered on the assessment book and the statutory exemption thereon was deducted from the total assessment. The court held that such exemption was in the nature



Mr. Nathan B. Cooper

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August 15, 1969

of a bounty and did not affect the "value of the taxable property" in the county within the constitutional provision, which for the purpose of fixing the limit of the county's indebtedness was held to be the total value placed upon such property without deducting the amount of the exemption. Also, see the case of Campbell v. Red Bud Consol. School Dist., 198 S.E. 225 wherein the court held that the value of property subject to a tax exemption was to be included in a bonded debt limitation computation by reason of the particular wording of the tax exemption statute involved.

The only reported California case on this basic subject, Pacific Gas & Electric Company v. Shasta Dam, Etc. District, 135 Cal.App.2d 463, is not factually in point. The limitation on the bonded indebtedness involved in that case was "20% of the assessed value of all real and personal property situated within the district." The court held that the phrase "assessed value of all real and personal property" situated within the district meant assessed valuation of all property whether subject to taxation or not, and that property exempt from taxation was to be included in the computation of the permissible amount of bonded indebtedness. The court indicated that a different conclusion might be reached under the facts of that case if the statute had provided that the debt limitation was to be based on the value of all taxable property situated within the district, but the court did not have before it, nor did it consider or discuss, the nature of the tax exemptions provided by Section 1d of Article XIII and Section 219 of the Revenue and Taxation Code, which are not of property but which are based on a portion of assessed value of property. As the court stated, page 471:

"The question (of the basis of debt limitation) is to be solved by the terms of the particular constitutional or statutory provisions."

In summation, you are advised that in computing the bonded debt limitation of the city and county you are to exclude from such computation the assessed value of property subject to the Homeowners' Personal Property Tax Exemption and are to include in such computation the full assessed value of property subject to the Homeowners' Property Tax Exemption and the Business Inventory Tax Exemption.

Very truly yours,

TJB

THOMAS M. O'CONNOR
City Attorney

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August 20, 1969

Honorable John A. Ertola, President
Board of Supervisors
235 City Hall
San Francisco, California

Subject: Rewards for Information re Illegal Use
of Street Cleaning Receptacles

Dear Supervisor Ertola:

This is in reply to your letter of July 16, 1969, in which you refer to the practice of private individuals depositing their personal garbage and rubbish in public garbage disposal facilities and request comments relative to the possibility of enacting legislation authorizing the posting of rewards to persons who witness and report others engaged in such activity and increasing the penalties therefor. You refer to persons who use receptacles placed upon the sidewalk by the Street Cleaning Department for the deposit of rubbish and garbage originating on private property such as homes, apartments and commercial establishments.

Please be advised that the practice you have reference to is illegal. It specifically violates Section 35(a) of the Police Code of the City and County of San Francisco which provides as follows:

"It shall be unlawful for any person to deposit any refuse, rubbish, paper, sweepings, dirt or waste from any residence, flat, apartment house, store or office building in, on top, or alongside of the street cleaning receptacles placed in the sidewalk areas for use by the Street Cleaning Department; providing that pedestrians and other persons occupying said streets shall be permitted to



Honorable John A. Ertola

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August 20, 1969

deposit in said receptacles cigar or candy wrappers, candy bags, empty match containers, used envelopes, newspaper and cigarette wrappings, empty lunch boxes and other such hand waste."

In addition, since said street cleaning receptacles are the property of the City and County of San Francisco and except as provided in Section 35(a) of the Police Code (supra) are for the exclusive use of the Street Cleaning Department whose employees place street sweepings therein for later removal by truck, the custom you refer to violates Section 374b of the Penal Code and Section 4476 of the Health and Safety Code of the State of California in so far as those sections prohibit the deposit of materials referred to therein on public property. Section 374b of the Penal Code provides in part as follows:

"It shall be unlawful to place, deposit or dump, or cause to be placed, deposited or dumped, any garbage, swill, cans, bottles, papers, ashes, refuse, carcass of any dead animal, offal, trash or rubbish or any noisome, nauseous or offensive matter in or upon any public or private highway or road, including any portion of the right-of-way thereof, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than property designated or set aside for such purpose by the governing board or body having charge thereof. It shall be unlawful to place, deposit, or dump, or cause to be placed, deposited or dumped, any rocks or dirt in or upon . . . any public park or other public property, without the consent of the state or local agency having jurisdiction over such highway, road, or property. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor."

The general rule is that a municipal corporation may offer rewards for the apprehension and conviction of offenders against local regulations, but express authorization from the state must exist to empower local governing bodies to utilize the reward system against violators of California penal laws.

The practice of depositing personal garbage and rubbish in a public receptacle also violates Section 374b of the Penal Code, as well as Section 4476 of the Health and Safety Code.



Honorable John A. Ertola

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August 20, 1969

or upon any private property into or upon which the public is admitted by easement, license or otherwise, is guilty of a misdemeanor."

"Garbage" is defined in Section 4475 of the Health and Safety Code as follows:

"Garbage" is defined in Section 4475 of the Health and Safety Code as follows:

"As used in this article, 'garbage' includes any or all of the following:

- "(a) Garbage.
- "(b) Swill.
- "(c) Refuse.
- "(d) Cans.
- "(e) Bottles.
- "(f) Paper.
- "(g) Vegetable matter.
- "(h) Carcass of any dead animal.
- "(i) Offal from any slaughterpen or butcher shop.
- "(j) Trash.
- "(k) Rubbish.
- "(l) Abandoned and unidentifiable vehicles or vehicle bodies.
- "(m) Abandoned iceboxes and refrigerators."

Said sections in general cover the same matter as is referred to in Section 374b of the Penal Code (supra). Both sections provide that their violation is a misdemeanor without specifically specifying the punishment for their violation. Therefore, the punishment for a violation of both Sections 374b of the Penal Code and 4476 of the Health and Safety Code is governed by the provisions of Section 19 of the Penal Code which provides:

"Except in cases where a different punishment is prescribed by any law of this State, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both."

On the other hand, the punishment for the violation of Section 35(a) of the Police Code is contained in Section 37 of that code which provides:

"Any person who shall violate any of the provisions of Sections 33 to 36, inclusive, of this Article, shall

Honorable John A. Ertola

-4-

August 20, 1969

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"Any person who shall violate any of the provisions of Sections 33 to 36, inclusive, of this Article, shall

Honorable John A. Ertola

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August 20, 1969

be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than Five (\$5.00) Dollars nor more than One Hundred (\$100.00) Dollars, or by imprisonment in the County Jail for not more than six (6) months, or by both such fine and imprisonment."

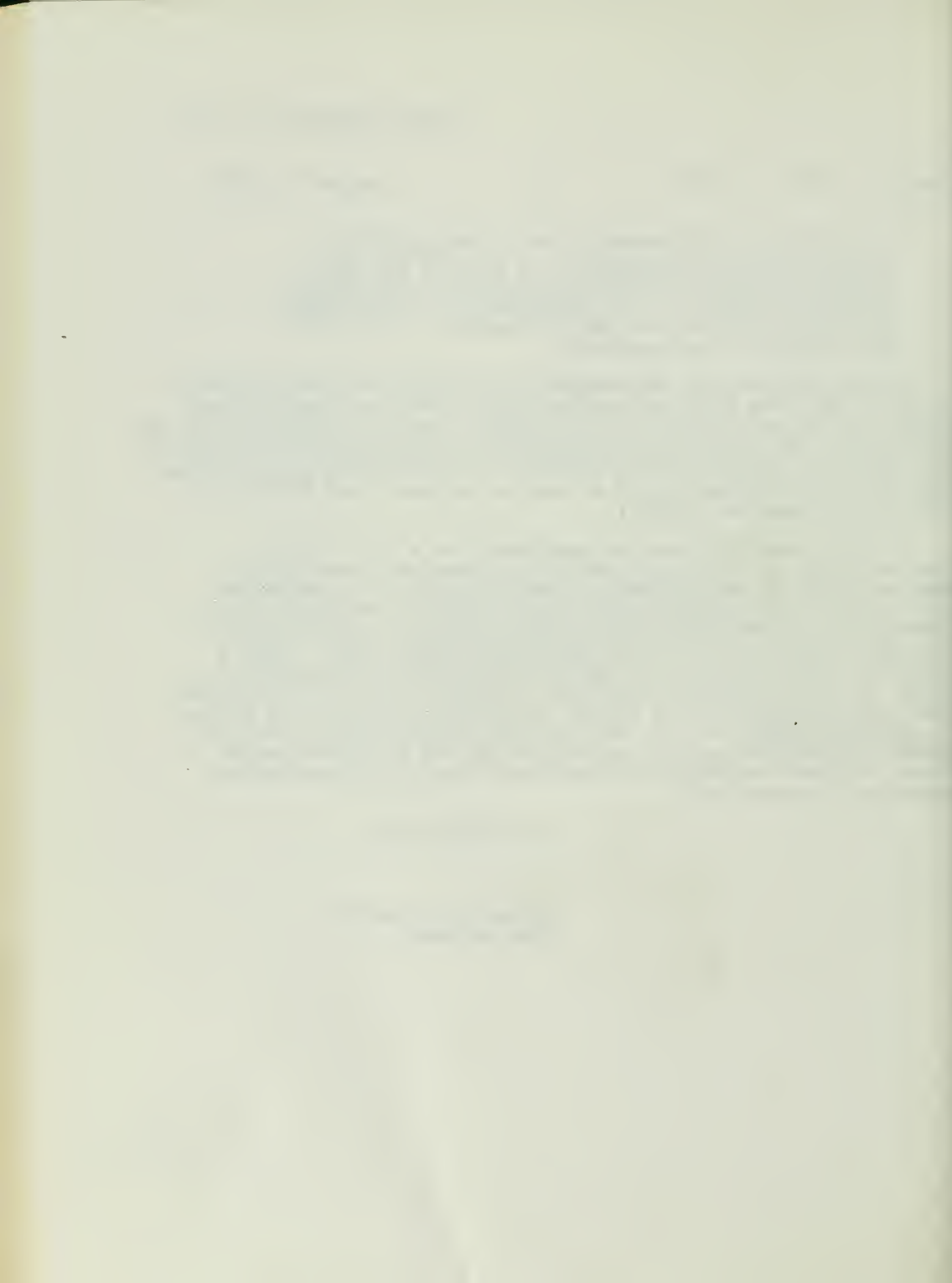
While the term of imprisonment is the same for the violation of both the state statutes and the local ordinance, the maximum fine that can be imposed is considerably less in connection with the ordinance. The maximum penalty that may be imposed by a municipality for the violation of an ordinance is imprisonment for a period not exceeding six months and a fine of not more than \$500.00 or both (Govt. Code Sec. 36901).

Rather than increase the penalties for a violation of Section 35(a) of the Police Code to the maximum authorized by Section 36901 of the Government Code (supra), it is suggested that persons who illegally use street cleaning receptacles be arrested and prosecuted under the provisions of Sections 374b of the Penal Code or 4476 of the Health and Safety Code. Such a procedure would forestall a defense of possible pre-emption by state law of the offense denounced in Section 35(a) of the Police Code (In re Lane, 58 C.2d 99; In re Hubbard, 62 C.2d 119; Galvin v. Superior Court, 70 A.C. 905) and would also allow a court to impose the maximum penalty authorized by law for violation of a local ordinance although the conviction was of a state statute covering the same field.

Very truly yours,

WRL

THOMAS M. O'CONNOR
City Attorney



August 4, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Legality of Non-Police Personnel
Taking Alcoholics into Custody

Dear Mr. Dolan:

You have asked whether it would be legally permissible under existing laws to employ the services of non-police personnel to take individuals suffering from the effects of alcoholism into custody and to arrange for their subsequent treatment under properly constituted authority.

Basically, under both the federal and state constitutions a person is entitled to be free from personal restraint and to engage in any activity not unlawful. (11 Cal. Jur. 2d 595). Therefore, unless the conduct of those proposed to be taken into custody is unlawful, they may not be restrained in either their movement or activity.

With respect to persons who are alcoholics, taking them into custody solely because they are alcoholics would be constitutionally prohibited. However, persons, whether alcoholics or not, may be arrested and taken into custody for public drunkenness in violation of statute (Powell v. Texas, 20 R.Ed 2d 1254; In Re Spinks, 253 Cal. App. 2d 748). In the first instance cited, a person would be punished solely for his status as an alcoholic, while in the latter situation a person would be held liable for his conduct for being drunk in a public place on a particular occasion.

Under Penal Code Section 647(f) a person is guilty of a misdemeanor if he is found in a public place under the influence of intoxicating liquor in such a condition that he is unable to exercise care for his own safety or the safety of others. Thus, the persons that may be taken into custody would be only those who are in violation of Section 647(f).

Mr. Robert J. Dolan

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August 4, 1969

The persons who would be employed to take those in violation of Section 647(f) into custody would not be police officers and thus would not have the powers of a peace officer. They would be acting as private citizens insofar as their power to take another person into custody is concerned. (See People v. Martin, 225 Cal. App. 2d 91, 94.)

An arrest is defined by statute as taking a person into custody in a case and in the manner authorized by law (section 834, Penal Code). It may be made by a private citizen for a public offense committed or attempted in his presence (section 837, Penal Code) and who thereafter must, without unnecessary delay, take the person arrested before a magistrate or deliver said person to a peace officer (section 847, Penal Code). The peace officer then must either take the arrested person before a magistrate or release the person if the arrest was for intoxication and no further proceedings were desirable (section 849, Penal Code).

You are advised, therefore, that persons other than police officers may be employed to take those who are intoxicated in public in violation of section 647(f) of the Penal Code into custody, with the duty to immediately turn the arrested person over to a peace officer or magistrate.

Very truly yours,

EAB

THOMAS M. O'CONNOR
City Attorney

August 14, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Jurisdiction of Board of Supervisors
to Waive Tax Bond for Proposed
Condominium Subdivision Owned by
Federal Housing Administration

Dear Mr. Dolan:

This is in response to your request for an opinion as to the authority of the Board of Supervisors to waive a bond requirement of the Subdivision Map Act when a presently existing building is to be converted into a condominium.

You are advised that because the property is presently owned by the Federal Housing Administration, an agency of the United States Government, the requirement for posting of a bond is not applicable. The Board of Supervisors has the authority to approve the proposed Subdivision Map converting the presently existing premise at 1280 Ellis Street into a condominium as provided for under the applicable sections of state law.

A draft of legislation which would accomplish this waiver together with the proposed Subdivision Map is enclosed for your consideration.

Very truly yours,

RAK

THOMAS M. O'CONNOR
City Attorney

August 21, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Relationship of the San Francisco
Pound, the Dead Animal Service,
and the Animal License Collection

Dear Mr. Dolan:

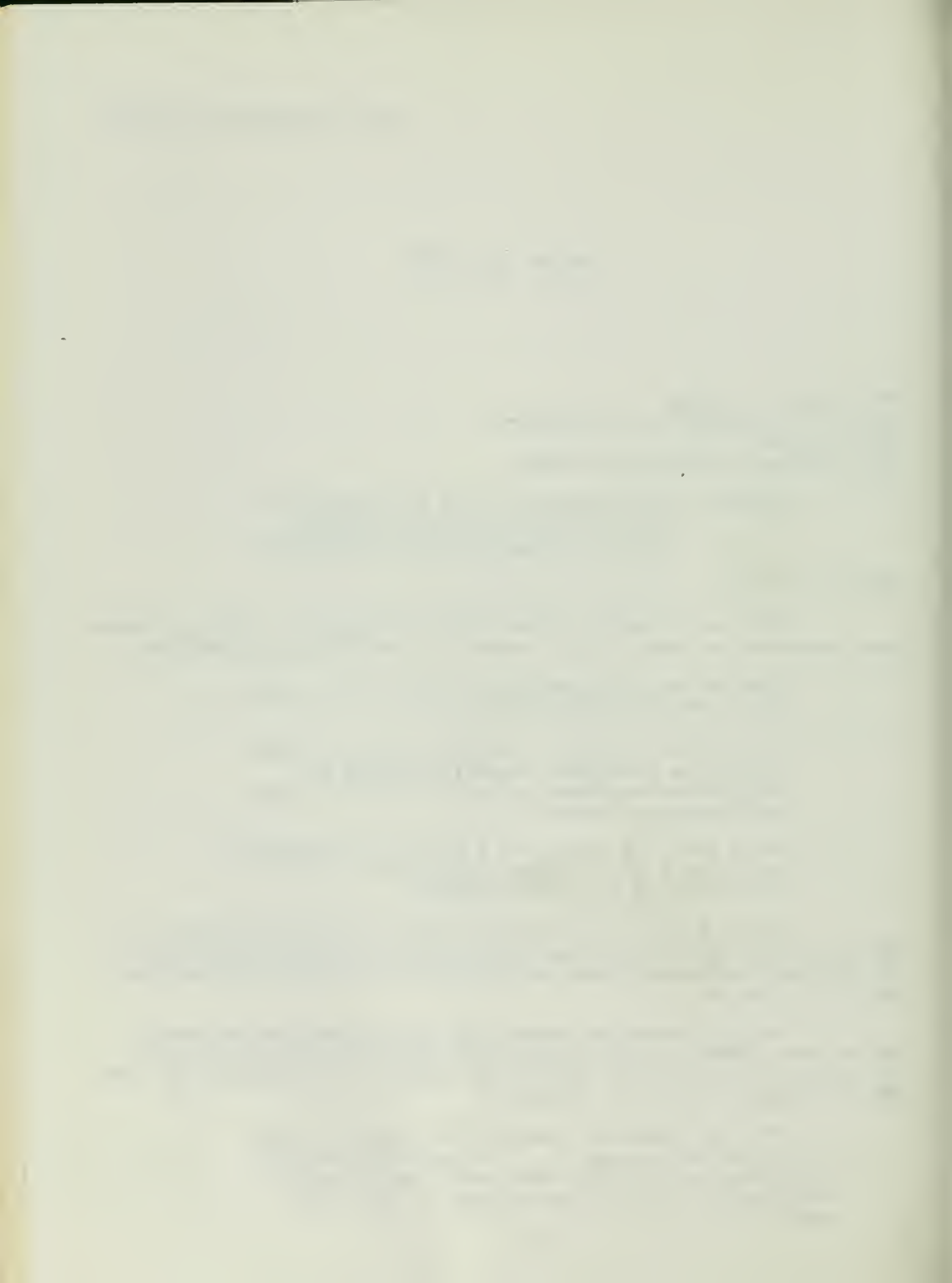
This is in reply to your letter of August 6, 1969, wherein you requested my opinion with regard to the following questions:

1. What is the relationship, if any, between the above mentioned operations?
2. May the City properly require the poundkeeper to pay the kennelmen prevailing wages as established pursuant to Section 151.3 of the San Francisco Charter?
3. Could the City establish a board or commission to act as a surveillance officer over the activities of the public pound?

San Francisco's public pound was established pursuant to Ordinance No. 11.141. The authority for such action on the part of the Board of Supervisors was Section 8, Chapter II of the then existing Charter.

The San Francisco Society for the Prevention of Cruelty to Animals (SFSPCA) is designated the official City Poundkeeper by virtue of Section 15.9 of the San Francisco Administrative Code which states, in part, as follows:

"The San Francisco Society for the Prevention of Cruelty to Animals, . . . is hereby appointed Poundkeeper of the City and County and as such Poundkeeper it shall have charge of the public pound."



Mr. Robert J. Dolan

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August 21, 1969

The duties and obligations of the Poundkeeper are found in Sections 43, 44 and 46 of Part II, Chapter V of the San Francisco Municipal Code.

The SPCA Hospital is a part of the entity which operates the pound and the veterinarians and other employees of the hospital are hired by and under the control of the Poundkeeper.

The Dead Animal Service is an operation whose management has no connection with the SPCA or the Poundkeeper. The contract to provide pick up and removal of dead animals from streets, public places and private places in San Francisco was awarded to the Animal Specialty & Control Co., 927 Victoria Drive, Arcadia, California. The contract provides that the service shall remove dead animals from the San Francisco Pound when requested to do so. Other than picking up and disposing of dead animals from the Pound, the Dead Animal Service has no association with the San Francisco SPCA. The Animal Specialty & Control Co. entered into a contract agreement only with the City and County of San Francisco to perform the above functions.

Section 215 of Part III of the San Francisco Municipal Code requires that:

"Every person owning, keeping or having control of any dog within the City and County of San Francisco shall pay an animal license fee of \$4.00 for each dog so owned, kept or controlled."

The Tax Collector is charged with the responsibility of accepting the license fees and issuance of metal tags for the dogs so registered. The money received from the purchase of these licenses is then deposited in and becomes a part of the General Fund.

A licensing fee is also collected by the Tax Collector from kennel owners in the City and County of San Francisco (Sec. 221 of Part III of the San Francisco Municipal Code. After issuance of the kennel license, the fee charged also becomes part of the General Fund.

It is evident from the foregoing that the above mentioned entities deal to some extent with the same subject matter. However, it is also apparent that these organizations are separate and perform a distinct function.

The SFSPCA is the City's official Poundkeeper (Section 16.9 Administrative Code). It is charged with the task of operating the public pound. In carrying out this obligation the SFSPCA

Mr. Robert J. Dolan

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August 21, 1967

established the SPCA Hospital and provides the necessary veterinarians and other employees to provide for its operation.

The Dead Animal Service is a service provided the City and County pursuant to a written contract entered into between the Animal Specialty & Control Co. and the City and County of San Francisco. Other than picking up dead animals from the Public Pound, as provided for in the contract, it has no apparent connection with the SFSPCA.

Finally, the Tax Collector is charged with the duty of collecting license fees for dogs owned and kennels operated within the City and County of San Francisco. The money thus collected is not turned over to the SFSPCA or set aside in a special account but rather it is deposited in the General Fund.

The second question presented is whether or not the City could properly require the Poundkeeper to pay wages to the kennelmen commensurate with those established under salary standardization procedures for City employees working in similar types of jobs.

Pursuant to Section 151 of the San Francisco Charter the Board of Supervisors has the duty to fix wages and compensation for all officers and employees of the City and County in all cases where compensation is paid by the City and County.

The Poundkeeper is not "paid" by the City and County of San Francisco. He may pay himself monthly up to 1/12th of the appropriation that the Board of Supervisors annually sets aside for the operation of the Public Pound. (Section 46(h), Part III, Chapter V of the San Francisco Municipal Code.)

The Poundkeeper may at any time and at his own expense appoint as many deputy poundkeepers as he may require to adequately discharge his duties. (Section 46(e), Part II, Chapter V of the San Francisco Municipal Code.)

Since the Poundkeeper is not on the City and County payroll and the deputy poundkeepers are hired and paid by the San Francisco Society for the Prevention of Cruelty to Animals, they do not come within the scope of the City's Salary Standardization Ordinance and the salaries in question cannot be fixed by said ordinance under the present legislation.

It would be proper for the Board of Supervisors to work out an agreement with the SFSPCA whereby the latter would agree to pay the prevailing wage rate to the deputy poundkeepers.

Mr. Robert J. Dolan

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August 21, 1969

The last inquiry presented concerns the procedures for the establishment of a board or commission to act in the capacity of surveillance officer over the Public Pound.

Section 9 of the San Francisco Charter provides in part:

"The Board of Supervisors may, by ordinance, confer on any officer, board or commission such other and additional powers as the board may deem advisable."

Section 9 of the Charter also provides that:

"The powers of the City and County . . . shall be vested in the board of supervisors and shall be exercised as provided in this charter."

Accordingly, the Board of Supervisors could create a commission to act in surveillance over the Public Pound under the latter cited power, or under the former cited power, additional powers and duties on an existing board, commission or officer.

In connection with the inquiry above relating to the appointment of a commission or board to act as surveillance officer it was also asked what obligation, if any, the City would assume if we accept an offer of free secretarial service for said commission if it were established.

The matter should be referred to Civil Service for review and then the Board of Supervisors could provide for the use of voluntary secretarial service. However, after volunteers begin working for a City board or commission the problem arises as to the City's liability for injury to them or injury or damage done to others by these volunteers. (See Opinion No. 1444, June 8, 1960, and Opinion No. 1467, August 24, 1960.) Provision should be made to insure adequate protection of volunteers' and the City's interests.

Very truly yours,

MHM

THOMAS M. O'CONNOR
City Attorney



August 25, 1969

Mr. R. Spencer Steele
Zoning Administrator
100 Larkin Street
San Francisco, California 94102

Subject: Authority of the City and County of
San Francisco to Zone Property Under
Jurisdiction of the Port Commission

Dear Mr. Steele:

This is in response to your request for an opinion as to whether, and to what extent, the zoning powers of the City and County of San Francisco are applicable to properties under the jurisdiction of the San Francisco Port Commission.

The determination of this question must be made within the purview of the provisions of Chapter 1333 of the Statutes of 1968 providing for the transfer of the Port to the City and County in trust for the purposes of commerce and navigation, Sections 48.2 and 48.3 of the Charter vesting exclusive powers in the Port Commission with relation to the management and control of the Port, and the agreement which was entered into between the City and County and the State of California specified as a condition of the transfer in Chapter 1333 of the Statutes of 1968.

Based upon an analysis of these laws and the agreement, it is my conclusion that the exercise of the City's zoning powers with relation to properties under the jurisdiction of the Port Commission is not, per se, prohibited but that such powers may not be exercised in a manner that would impair, interfere or otherwise conflict with the exclusive powers of control and management of the operation of the Port for the purposes of commerce and navigation vested in the Port Commission under the provisions of Sections 48.2 and 48.3 of the Charter. In the event of any such conflict, the general zoning powers of the City would have to yield to the specific and exclusive Charter powers granted to the Port Commission for such purposes, as well as to the terms of the underlying trust under which the properties have been conveyed to the City and County for the purposes of commerce and navigation by the provisions of Chapter 1333 of the Statutes of 1968.

Mr. R. Spencer Steele

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August 25, 1969

With reference to property not required for the purposes of commerce and navigation, Section 48.3(6) of the Charter provides that "if the port commission of the City and County of San Francisco determines that any portion of the transferred lands is not required for the foregoing uses described in this section, such lease or leases, franchises, permits, licenses and privileges may be for the purposes of such development and use as the commission finds will yield maximum profits to be used by the commission in the furtherance of commerce and navigation; . . .". The foregoing language is substantially contained in Section 3000 (d) of the Harbors and Navigation Code which was in effect at the time the Port was transferred to the City, and Section 3000.7 of the same Code authorized the exercise of the City's zoning powers with reference to these properties with the qualification that they should "permit the authority to use the property so as to yield maximum profits consistent with the pattern of land uses in the vicinity of the land so zoned."

In the laws which provided for the transition of the Port from the State to City ownership, there is no evidence of an intent to effect a change in the above mentioned basic zoning concepts expressed in Section 3000.7 of the Harbors and Navigation Code and it is my opinion that these concepts are implicit in the above quoted language of Section 48.3(6) of the Charter. Accordingly, it is my conclusion that properties under the jurisdiction of the Port Commission not required for the purposes of commerce and navigation are subject to the zoning powers of the City and County but that such power is to be exercised in a manner that will permit the Port Commission to use the property so as to yield maximum profits consistent with the pattern of land uses in the vicinity of the land zoned.

Very truly yours,

RAK

THOMAS M. O'CONNOR
City Attorney



August 25, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Authority of Board of Supervisors
to Rescind Resolution Ordering the
Vacation of a Portion of Lyon Street
Northerly of Marina Boulevard

Dear Mr. Dolan:

This is in response to your request for an opinion as to the authority of the Board of Supervisors to rescind a resolution ordering the vacation of a portion of Lyon Street northerly of Marina Boulevard.

The legal basis for the Board of Supervisors ordering the vacation of a street or a portion thereof is found in the following provisions of law. Section 107 of the Charter of San Francisco provides in part as follows:

"Where a procedure for the exercising of any rights and powers belonging to a city, or a county, or a city and county, relative to . . . vacating, paving, repaving or otherwise improving streets and highways . . . is provided by statute of the State of California, such procedure shall control and be followed, unless a different procedure is provided in or under authority of this charter or by ordinance continued by this charter or any such ordinance hereafter amended or by ordinance passed by the Board of supervisors, . . ."

The Board of Supervisors has not adopted a street vacation ordinance and therefore any proposed street vacation is accomplished under the provisions of the Streets and Highways Code beginning with Section 8300 thereof and ending with Section 8374.

Mr. Robert J. Dolan

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August 25, 1969

Section 8322 provides that before the vacation of any street or part thereof is ordered, the Board of Supervisors shall pass a resolution declaring its intention to do so and the resolution shall further fix a time and place for hearing all persons interested in or objecting to the proposed vacation. The section provides further that notices of the street vacation shall be posted conspicuously along the line of the street or part thereof proposed to be vacated. Section 8323 of the Streets and Highways Code provides as follows:

"The city council shall, on the day fixed for the hearing, or on the day to which the hearing is postponed or continued, hear the evidence offered by any person interested. If the city council finds, from all the evidence submitted, that any street or part thereof, described in the ordinance or resolution of intention, is unnecessary for present or prospective public street purposes, the city council may make its order vacating such street or part thereof."

In the case of Loma Vista Investment, Inc. v. Roman Catholic Archbishop of Los Angeles, a Corporation Sole, 158 Cal. App. 2d 56, 63-64, the court held as follows:

"The vacation of a street, when duly effected, results not only in the relinquishment of the public easement but also involves a physical closing which entitles the owner of the fee of the land to take full and complete control of it; title to the land previously subject to the public easement reverts to the owner free of the public easement for street purposes. (25 Cal. Jur. 2d 35, §177.)"

Under the analysis of the above quoted case it is clear that when the resolution ordering the vacation of a portion of Lyon Street was adopted by the Board of Supervisors, its act was final and the street area now stands vacated. A resolution rescinding the previously adopted resolution would be a nullity.

Very truly yours,

RAK

THOMAS M. O'CONNOR
City Attorney

September 3, 1969

Mr. S. Myron Tatarian
Director of Public Works
260 City Hall
San Francisco, California 94102

Re: Port Commission Jurisdiction--
Permits for Construction Work

Dear Mr. Tatarian:

This replies to your letter asking these questions relative to permits for construction work in the area under the Port Commission's jurisdiction:

1. What is the extent of the Port's jurisdiction insofar as the characteristics of those areas over which they have sole control?
2. Where the Port Commission leases land to private owner or user for such purposes as a restaurant, retail business, erection of signs, or construction of storage facilities other than those involved in subsequent transfer to a ship, and other similar non-Port purposes, do the City building ordinances apply; and, if so, does it require enforcement by the Department of Public Works?
3. Where the Port does work or where work is done on Port related facilities and assuming that the jurisdiction of that particular facility is under the Port Commission, what codes apply to that construction, and how are these enforced?
4. Who has jurisdiction and responsibility for vacant or condemned properties in the Port area, and how are we to proceed in the event said properties are the Port's jurisdiction?

Mr. S. Myron Tatarian

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September 3, 1969

In connection with question 3 your letter states, "all other City agencies or quasi-City agencies conform to the requirements of all City ordinances."

Answer to Question 1:

In general the Port Commission's jurisdiction over the area involved (described in H. & N. C. §1770) is extensive and exclusive. Charter §48.2 provides:

"All the powers and duties incident to the management, government, control and administration of said harbor and all properties and utilities used in connection therewith, shall be vested in the Port Commission of the City and County of San Francisco."

Section 3 of Stats. 1968, ch. 1333 (the Burton Act), refers to the complete authority of the city and county, "through a Harbor Commission," to regulate and control the harbor. The caption of Section VII of the "agreement relating to transfer of the Port of San Francisco from the State of California to the City and County of San Francisco" refers to the Port Commission's administration and control of the transferred property as an "autonomous operation."

These provisions mean that, within the Port area (H. & N. C. §1770), all powers of "management, government, control and administration" of construction work are vested in the Port Commission, not in the Board of Supervisors or in the Department of Public Works acting under authority of the Board of Supervisors.

In my letter to you of January 17, 1969, relative to the application of various city construction ordinances to structures within the boundaries of the Port Authority, I advised that, save where land will be rented for uses other than Port uses, as, for example, in the case of the proposed development of the North Waterfront Associates,

" . . . permits should not be required by your department and you should not engage in code enforcement in the area governed by the Port Commission. This is the situation which has prevailed in the past and, in my opinion, nothing in the agreement or legislation pertaining to the transfer was intended to change it."

Mr. S. Myron Tatarian

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September 3, 1969

Answer to Question 2:

No. These leases are not deemed by the Port Commission to be for "non-Port purposes." It considers them an important part of the commerce (business) of the Port. In view of the fact that all powers incident to management, government, control and administration of all properties used in connection with the harbor are intended to be vested in the Commission, it must be allowed wide discretion in determining what are, and what are not, "non-Port purposes." In view of this, and since, traditionally, your department has not enforced city building ordinances in the case of leases for such purpose, it should not do so now.

Answer to Question 3:

The construction codes which the Port Commission desires to apply are enforced by the Port Commission.

Answer to Question 4:

(a) The Port Commission has the jurisdiction and responsibility.

(b) Your department should not proceed.

Very truly yours,

GEB

THOMAS M. O'CONNOR
City Attorney



September 4, 1969

Art Commission
165 Grove Street
San Francisco, California 94102

Attention: Mr. Martin Snipper
Executive Director

Subject: Authority of Art Commission over
Port Commission Property

Gentlemen:

This refers to your request for an opinion as to whether and to what extent Charter Section 46 is applicable to the properties under the jurisdiction of the San Francisco Port Commission.

Section 46 provides that Art Commission approval is required with respect to the design of "buildings, bridges, viaducts, elevated ways, approaches, gates, fences, lamps and other structures erected or to be erected upon land belonging to the city and county, and concerning arches, bridges, structures and approaches which are the property of any corporation or private individual and shall extend over or upon any street, avenue, highway, park or public place belonging to the city and county."

The question must be determined in light of the provisions of Chapter 1333 of the Statutes of 1968 which provides for the transfer of the Port to the city and county in trust for the purposes of commerce and navigation, Charter Sections 48.2 and 48.3 vesting exclusive powers in the Port Commission with relation to the management and control of the Port, and the agreement which was entered into between the city and county and the State of California specified as a condition of the transfer in Chapter 1333 of the Statutes of 1968.

Based upon an analysis of these laws and the agreement, it is my conclusion that the exercise of the powers of the City's



Art Commission

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September 4, 1969

Art Commission with relation to properties under the jurisdiction of the Port Commission is limited by the exclusive powers of the Port Commission to control and manage the operation of the Port for the purposes of commerce and navigation.

Under the provisions of Section 48.2 and Section 48.3 of the Charter and the terms of the underlying trust under which the properties have been conveyed for the purposes of commerce and navigation by the provisions of Chapter 1333 of the Statutes of 1968, it is my opinion that the powers of the Art Commission under Section 46 do not extend to properties which are required by the Port Commission for the purposes of commerce and navigation and the Port Commission is not obliged to obtain the consent of the Art Commission for the erection of the buildings and other structures mentioned in Section 46 with respect to the use of the property for these purposes.

With respect to property under the jurisdiction of the Port Commission which is not required for the purposes of commerce and navigation, Section 48.3(6) provides that "if the Port Commission of the City and County of San Francisco determines that any portion of the transferred lands is not required for the foregoing uses described in this section, such lease or leases, franchises, permits, licenses and privileges may be for the purposes of such development and use as the commission finds will yield maximum profits to be used by the commission for the furtherance of commerce and navigation." It is my opinion that the jurisdiction of the Art Commission is applicable to buildings and other structures erected on Port property pursuant to the exercise of the powers contained in Section 48.3(6).

Section 46 also provides for the voluntary submission of "plans and designs" of buildings to the Art Commission for "advice and suggestion . . . in relation to beautification." The Port Commission may desire to submit plans and designs for buildings or structures which are not covered by Section 48.3(6) to the Art Commission for its advice and suggestions; however, such submission is not mandatory.

You are so advised.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

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1970

September 5, 1969

Thomas J. Cahill
Chief of Police
Hall of Justice
350 Bryant Street
San Francisco, California 94103

Attention: Mr. Alfred G. Arnaud
Assistant Deputy Chief

Subject: Validity of Section 5 of Charter and
Rule 2.113 of Police Department re
Patrolman Running for Member of Fire
Board in Novato
Your File No. L-94

Dear Chief Cahill:

This is in reply to your recent letter questioning the validity of Section 5 of the Charter of the City and County of San Francisco and Rule 2.113 of the Rules and Procedures of the San Francisco Police Department insofar as they apply to a member of the San Francisco Police Department who wishes to seek an elective office. You have advised that the member in question resides in Novato and wishes to place his name on the November 4, 1969, ballot for a position on the Novato Fire Board. It is my understanding that the Novato Fire Board meets twice monthly and that the member's participation would occur only during off-duty hours.

As a point of reference, Rule 2.112 and the applicable portion of Section 5 of the Charter are set forth immediately below:

"2.113. Shall not actively participate in politics relative to the election or appointment of public officials. Neither shall he take active part in such political campaigns or in soliciting votes or in levying, contributing or soliciting funds or support for the purpose of favoring or hindering the appointment or election of candidates for public office."



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"Section 5. Any appointive officer or employee of the city and county who shall become a candidate for election by the people to any public office shall automatically forfeit such city and county office or position."

The initial question is whether these prohibitions against political participation are reasonable and necessary for the preservation of the honor and efficiency of the public service.

"The freedom of the individual to participate in political activity is a fundamental principle of a democratic society and is the premise upon which our form of government is based. Our state Constitution declares, 'All political power is inherent in the people' (Const., art. I, §2, and the First Amendment of the federal Constitution establishes the right of every citizen to engage in political expression and association. (See New York Times Co. v. Sullivan (1964) 376 U.S. 254 [84 S.Ct. 710, 720-721, 11 L.ed.2d 686]; Sweezy v. State of New Hampshire (1957) 354 U.S. 234, 250 et seq. [77 S.Ct. 1203, 1 L.ed.2d 1311, 1324 et seq.].) In this state both statutes and judicial decisions have recognized the fundamental right of citizens generally not only to vote but also to hold office (Gov. Code, §§274, 275; Carter v. Commission on Qualifications of Judicial Appointments (1939) 14 Cal.2d 179, 182 [93 P.2d 140]; People v. Washington (1869) 36 Cal. 658, 662), and the fundamental right of employees in general to engage in political activity without interference by employers (Lab. Code, §1101; Lockheed Aircraft Corp. v. Superior Court (1946) 28 Cal.2d 481, 486 [171 P.2d 21, 105 A.L.R. 701])."

Fort v. Civil Service Commission (1964),
61 C.2d 331, 334-5.

The Fort case, supra, is one of several recent cases which have discussed the invasion of constitutional rights of public employees by the public employer as a condition of employment. In Letter Opinion No. 68-28 of this office, April 9, 1968, I stated:

" . . . In Fort v. Civil Service Commission (1964) 61 Cal.2d 331, an Alameda County Charter provision provided that no officer or employee shall take part

Thomas J. Cahill

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in any political campaign or election under penalty of removal from office. The plaintiff, a county employee, became chairman of a speakers' bureau for a committee to reelect the state governor and under the Charter provision he was dismissed from county service. The court applied a principle enunciated in several U. S. Supreme Court cases that First Amendment rights may not be curtailed by the public employer unless there is a 'compelling' interest in limiting those rights. (Sherbert v. Verner, 374 U.S. 398; Gibson v. Florida Legislative Investigation Com. (1963), 372 U.S. 539; N.A.A.C.P. v. Button, 371 U.S. 415; Bates v. City of Little Rock, 361 U.S. 516.) Further, if a compelling interest to restrict constitutional rights does exist, the restriction must be drawn with narrow specificity (Talley v. State of California (1960) 362 U.S. 60; Wollam v. City of Palm Springs (1963), 59 Cal.2d 276). The Fort case recognizes that there does exist a need to limit some constitutional rights such as, for example, a proscription of political activities during those hours in which the employee is discharging the duties of his position. However, the court states at page 338:

" . . . the more remote the connection between a particular activity and the performance of official duty the more difficult it is to justify restriction on the ground that there is a compelling public need to protect the efficiency and integrity of the public service."

Charter Section 5 was expressly considered and held to be unconstitutional in Kinnear v. City and County of San Francisco (1964), 61 C.2d 341, involving a deputy in the sheriff's department who filed a declaration of candidacy for election to the office of sheriff. The court stated, at page 343, that Charter Section 5 related " . . . to all public offices, whether they be partisan or nonpartisan in character and whether they be San Francisco offices or national or state offices. San Francisco has not . . . shown a compelling need to restrict the fundamental right involved on such a sweeping scale." Further, the court pointed out that state legislation enacted in 1963 regulating political activities by local public employees and applicable to San Francisco has not restricted in any way the right to run for office. (See Gov. Code, §§3201-3206.) Although the court

Thomas J. Cahill

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suggested that Charter Section 5 could be constitutionally rewritten, no such revision has occurred.

The constitutionality of Police Department Rule 2.113 was considered by this office in Letter Opinion No. 69-30, February 27, 1969, a copy of which is attached for your information. My opinion then and now is that Rule 2.113 is too broad and all-encompassing to stand the test of being a constitutional rule.

Further, there does not appear to be any conflict of interest prohibited by Charter Section 222 between the particular elective office in Novato and employment as a member of the San Francisco Police Department.

Therefore, I am of the opinion that the police officer in question may legally place his name on the November 4, 1969, ballot for a position as a member of the Novato Fire Board.

Very truly yours,

GEK

THOMAS M. O'CONNOR
City Attorney

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October 6, 1969

Civil Service Commission
151 City Hall
San Francisco, California

Attention: Mr. Harry Albert
Assistant General Manager, Personnel

Subject: Meaning of Phrase "Regular Full-Time
Permanent Employees" as Used in
Salary Standardization Ordinance
Section IV(j)

Gentlemen:

This is in response to your letter of August 12, 1969, in which you inquire as to a legal definition of the term "regular full-time permanent employee" and whether employees under temporary certification and limited tenure certification may be included.

Pursuant to the administrative provisions of the salary standardization ordinance (Section IV(j)), additional compensation of \$15.00 per month may be granted to regular full-time permanent employees who are required, on a regular basis, to translate to and from a foreign language, subject to submission by the department of the need for such special service and approval by the Civil Service Commission.

You state that a request has been received from a number of temporary employees asking that the Commission interpret the ordinance to include employees under temporary certification. Your letter further states that in accordance with past practice and the general Rules of the Commission a regular full-time permanent employee is one who has been duly appointed from a regular civil service eligible list and has completed the probationary period.

The term "regular full-time permanent employee" is not defined in the Charter, the Civil Service Rules or in the administrative provisions of the Salary Standardization Ordinance. It would appear that such an employee must be defined to be one who

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The first of these is the fact that the number of persons who have been admitted to the hospital has increased during the last year. This is due to the fact that the hospital has been enlarged and the number of beds has been increased. The second fact is that the number of persons who have been discharged from the hospital has also increased. This is due to the fact that the hospital has been able to treat a larger number of cases and the patients have been able to recover more quickly. The third fact is that the number of persons who have been admitted to the hospital has been increased during the last year. This is due to the fact that the hospital has been able to treat a larger number of cases and the patients have been able to recover more quickly. The fourth fact is that the number of persons who have been discharged from the hospital has also increased. This is due to the fact that the hospital has been able to treat a larger number of cases and the patients have been able to recover more quickly. The fifth fact is that the number of persons who have been admitted to the hospital has been increased during the last year. This is due to the fact that the hospital has been able to treat a larger number of cases and the patients have been able to recover more quickly. The sixth fact is that the number of persons who have been discharged from the hospital has also increased. This is due to the fact that the hospital has been able to treat a larger number of cases and the patients have been able to recover more quickly. The seventh fact is that the number of persons who have been admitted to the hospital has been increased during the last year. This is due to the fact that the hospital has been able to treat a larger number of cases and the patients have been able to recover more quickly. The eighth fact is that the number of persons who have been discharged from the hospital has also increased. This is due to the fact that the hospital has been able to treat a larger number of cases and the patients have been able to recover more quickly. The ninth fact is that the number of persons who have been admitted to the hospital has been increased during the last year. This is due to the fact that the hospital has been able to treat a larger number of cases and the patients have been able to recover more quickly. The tenth fact is that the number of persons who have been discharged from the hospital has also increased. This is due to the fact that the hospital has been able to treat a larger number of cases and the patients have been able to recover more quickly.

Civil Service Commission

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October 6, 1969

receives a regular full-time permanent appointment.

Charter Section 148 deals with requisition, certification and appointment of employees. This section provides that the Civil Service Commission shall determine whether the position is temporary, seasonal or permanent. If the position is declared permanent by the Civil Service Commission, Section 148 then provides for a probationary period. Section 148 then concludes with the following language:

"Immediately prior to the expiration of the probationary period the appointing officer shall report to the civil service commission as to the competence of the probationer for the position, and if competent, shall recommend permanent appointment." (Emphasis added.)

In addition, Rule 46 of the Rules of the Civil Service Commission defines "permanent appointment" as follows:

"Unless otherwise described or defined in any rule, the term 'permanent appointment,' when used in these rules, shall mean an appointment in which the probationary period has been completed."

A permanent employee, therefore, is one appointed pursuant to Charter Section 148, i.e., from a list of eligibles; the Civil Service Commission has determined and declared the position to be permanent; and the probationary period successfully completed.

A permanent appointment under Section 148 is distinguished from a limited tenure appointment under Charter Section 145.1 and an emergency appointment under Charter Section 149. Section 145.1 states: "Persons serving under limited tenure appointments as in this section provided shall by reason of such service acquire no right or preference to permanent civil service status as defined elsewhere in this charter or by rule of the civil service commission which is conferred upon persons completing probationary appointments made from lists of eligibles established through the regular examination procedures provided in Section 145 of the charter." (Emphasis added.) Charter Section 145 provides the lists of eligibles from which appointments are made under Section 148. Section 149 provides for temporary appointments when no list of eligibles exists or immediate service is required pending the certification of an employee from the list of eligibles.

The use of the words "regular" and "full-time" in the phrase "regular full-time permanent employee" are qualifying to a

THE ANTHROPOLOGY OF THE FUTURE

By the Hon. Mr. J. H. St. John, F.R.S., Secretary of the Royal Society.

THE ANTHROPOLOGY OF THE FUTURE is a subject which has of late years attracted much of the public attention, and it is not surprising that it should have done so. The progress of science, and the discovery of the laws of heredity, have shown us that the human race is not a fixed type, but a variable one, and that the future of the race is in our hands. It is a subject which has of late years attracted much of the public attention, and it is not surprising that it should have done so. The progress of science, and the discovery of the laws of heredity, have shown us that the human race is not a fixed type, but a variable one, and that the future of the race is in our hands.

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Civil Service Commission

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October 6, 1969

"permanent employee" as defined supra.

In my opinion, the use of the term "regular" was intended to further insure that the permanent employee is one who qualified for an eligible list under Section 145 and was appointed under Section 148. Note the use of the word "regular" (Section 145.1, supra) in referring to lists of eligibles under Section 145. The use of the word "regular" is redundant but it does add further assurance that a permanent employee is one appointed from a list of eligibles pursuant to Section 148.

The use of the term "full-time" is defined in Rules 16, 17, 17A and 17B of the Rules of the Civil Service Commission. These rules are self-explanatory.

I am of the opinion that the phrase "regular full-time permanent employee" is one who has been appointed to a full-time position from a list of eligibles and has completed his probationary period. Employees under temporary certification and limited tenure certification are therefore not included.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

PROCEEDINGS OF THE

MEETING OF THE SOCIETY HELD AT THE UNIVERSITY OF CHICAGO, CHICAGO, ILL., ON THE 15TH, 16TH, AND 17TH OF DECEMBER, 1909.

EDITED BY J. H. HARRIS, SECRETARY.

PUBLISHED BY THE AMERICAN PHYSIOLOGICAL SOCIETY, CHICAGO, ILL.

1910.

CHICAGO, ILL.

1910.

October 6, 1969

Mr. Robert J. Dolan
Clark of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Authority of Board of Supervisors
Approving By-Laws and Legislation--
Model Cities Program

Dear Mr. Dolan:

This is in response to your request for an opinion as to whether or not approval of by-laws and enactment of enabling legislation for execution of a contract with Mission Model Neighborhood Corporation, a nonprofit corporation, would be in legal conformity with the provisions of the Charter of the City and County of San Francisco. Attached to your letter are copies of the by-laws of a nonprofit corporation and the proposed resolution which would approve these by-laws.

Pursuant to Resolution No. 377-68 the Board of Supervisors approved a request to the United States Department of Housing and Urban Development requesting financial assistance to plan and develop a comprehensive City Demonstration Program in the Mission area. By Resolution No. 574-69 the Board of Supervisors authorized the Mayor to execute a contract with the Housing and Urban Development Department of the United States of America whereby the federal agency would make a grant of financial assistance to the City and County of San Francisco to establish two model neighborhood areas--one for the Bayview-Hunters Point area and one for the Mission area. Under the applicable provisions of federal law, a model neighborhood planning study for the Mission area cannot proceed unless the Board of Supervisors has approved the City demonstration area.

The proposed by-laws attached to your letter provide for a neighborhood development corporation with a board of directors, officers, a neighborhood advisory council, and provide in Section VI that the model neighborhood agency must coordinate with the



Mr. Robert J. Dolan

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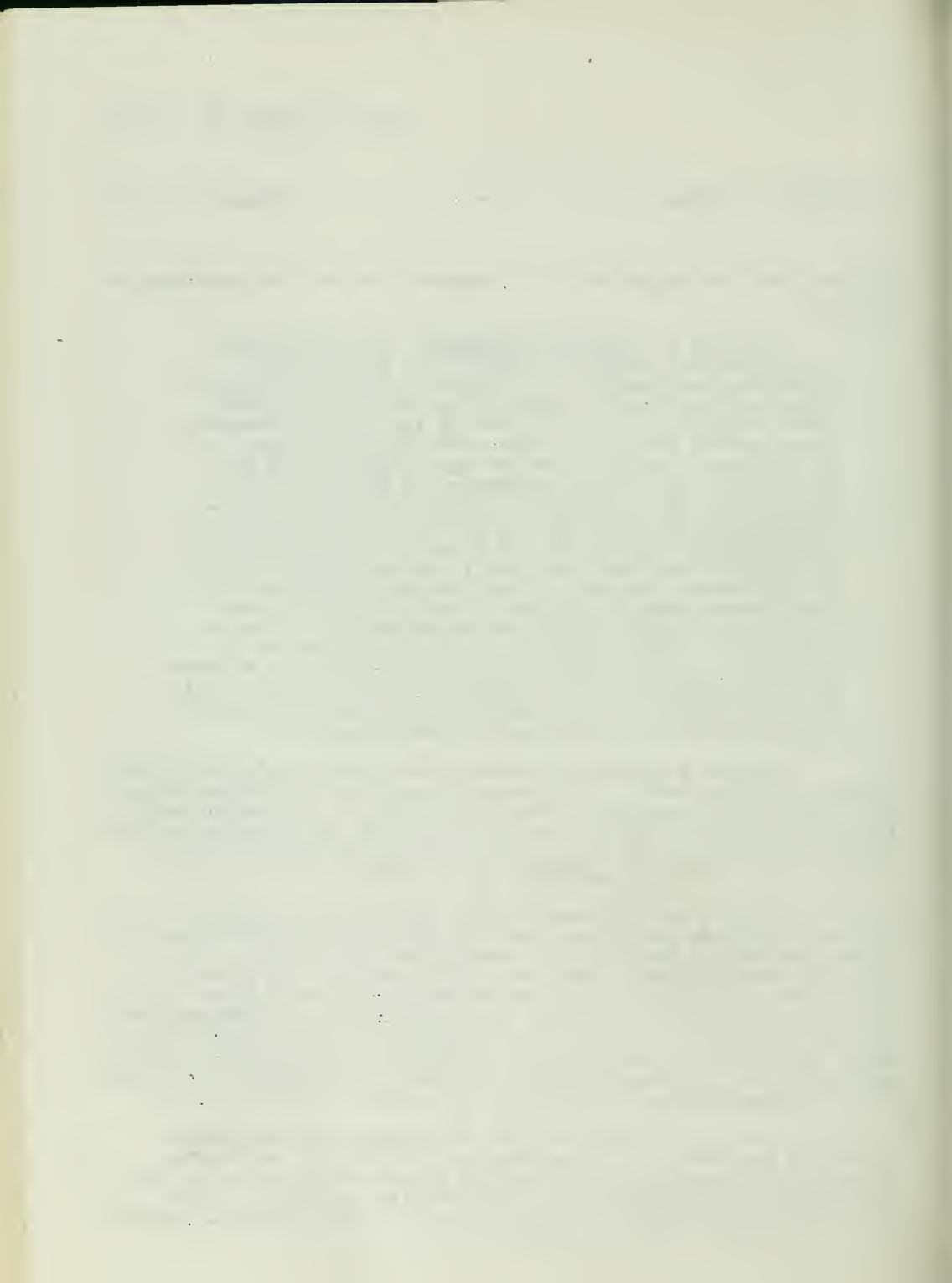
Mission Coalition Organization. Section 1 of Part VI provides as follows:

"Section 1. Review of Program. Upon completion of the Mission District Model Cities Comprehensive Demonstration Program, the Mission Coalition Organization shall review all parts of the said Program and shall, within thirty (30) days of its receipt thereof recommend to the corporation such changes, if any, as it may deem necessary for the best interests of the community. If, at the expiration of said thirty (30) day period, any disagreement exists between the corporation and the Mission Coalition Organization as to any portion or aspect of the Program, the corporation and the Mission Coalition shall explore possibilities for agreement thereon. If at the end of fifteen (15) days, commencing at the end of said thirty (30) day period, the Mission Coalition Organization continues to object to any specific portion or portions of the Program, then such portion or portions shall be deleted from the Program and the remainder of the Program shall be submitted by the corporation to the Board of Supervisors of the City and County of San Francisco."

Section 1 provides generally that upon completion of the Mission District Model Cities Comprehensive Demonstration Program the Mission Coalition must review all parts of the program and if it fails to approve the program, the portions not approved by the Mission Coalition shall not be submitted to the Board of Supervisors of the City and County of San Francisco for approval.

The contract between the United States Department of Housing and Urban Development and the City and County of San Francisco provides in Section 202 thereof that the agency, i.e., the City and County of San Francisco, will undertake the planning activities with its own staff or by contracting with other public bodies or private contractors. No moneys from the planning grant can be disbursed by the City to a private contractor except pursuant to a written contract. Any contract entered into by the City and County of San Francisco must contain the Department of Housing and Urban Development regulations for contract services.

One of the provisions of the regulations incorporated in such a contract is the requirement that all of the reports, information, data, etc., prepared by a contractor cannot be made available to any individual or organization without the prior written approval of the City and County of San Francisco. Section



Mr. Robert J. Dolan

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1 of Article VI of the proposed by-laws should specifically contain approval by the City that all of the reports, information and data prepared by the Model Neighborhood Corporation can be reviewed by the Mission Coalition Organization. This should be done in order to comply with the requirements of the Housing and Urban Development regulations.

Section 2 of Article VI of the by-laws provides as follows:

"Section 2. Federally Aided Programs. All plans, contracts, or proposals for programs in the Mission District Model Cities Area which are assisted by Federal grant-in-aid funds and will be used in computing the amount of the Supplemental Grant must be submitted to the corporation and the Mission Coalition Organization, and must be approved by each of them before submission to the Board of Supervisors of the City and County of San Francisco for its approval, and the failure of either the corporation or the Mission Coalition Organization to so approve shall preclude such submission. The corporation may enter into contracts with the Mission Coalition Organization and the City to give effect to this provision."

The above provision which would have to be carried forward in any contract entered into between the City and the Mission Model Neighborhood Corporation in effect grants a veto power to the corporation and a third party organization which is not a signatory to the contract. This provision could not be agreed to by the Board of Supervisors as it is beyond the power of the Board under City's Charter to give effect to such a provision. Section 9 of City's Charter provides in effect that except for the power reserved in the people and those powers specifically delegated to officials, boards and commissions, all residuary power is vested in the Board of Supervisors. Further, Section 9 provides in part as follows:

"The board of supervisors may, by ordinance, confer on any officer, board or commission such other and additional powers as the board may deem advisable."

The functions and responsibility of government cannot be delegated to private individuals or entities, but must be carried out by the elected representatives as provided for in the Charter. (See Taxing Factors v. County of Marin, 20 Cal. App. 2d 79.)

It is a fundamental rule of charter construction that the charters under California law are not charters of delegated power;



Mr. Robert J. Dolan

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rather a charter is a limitation upon the power of the city to enact legislation. (See West Coast Advertising Co. v. San Francisco (1939), 14 Cal. 2d 516.)

Section 2 of Article VI of the proposed by-laws and Section 5 of the proposed resolution contains language so broad that it would appear to cover the entire spectrum of federal grants-in-aid programs for which the City and County of San Francisco might be eligible. Since the functions and responsibility of government cannot be delegated to private individuals or entities, this language as presently written would be beyond the authority of the Board of Supervisors to approve as to the by-laws, and beyond the authority of the Board of Supervisors to adopt as pertains to Section 5 of the proposed resolution.

Very truly yours,

RAK

THOMAS M. O'CONNOR
City Attorney



October 8, 1969

Miss Miriam E. Wolff
Chief Counsel, Port of San Francisco
Ferry Building
San Francisco, California 94111

Subject: Public Agency Statement

Dear Miss Wolff:

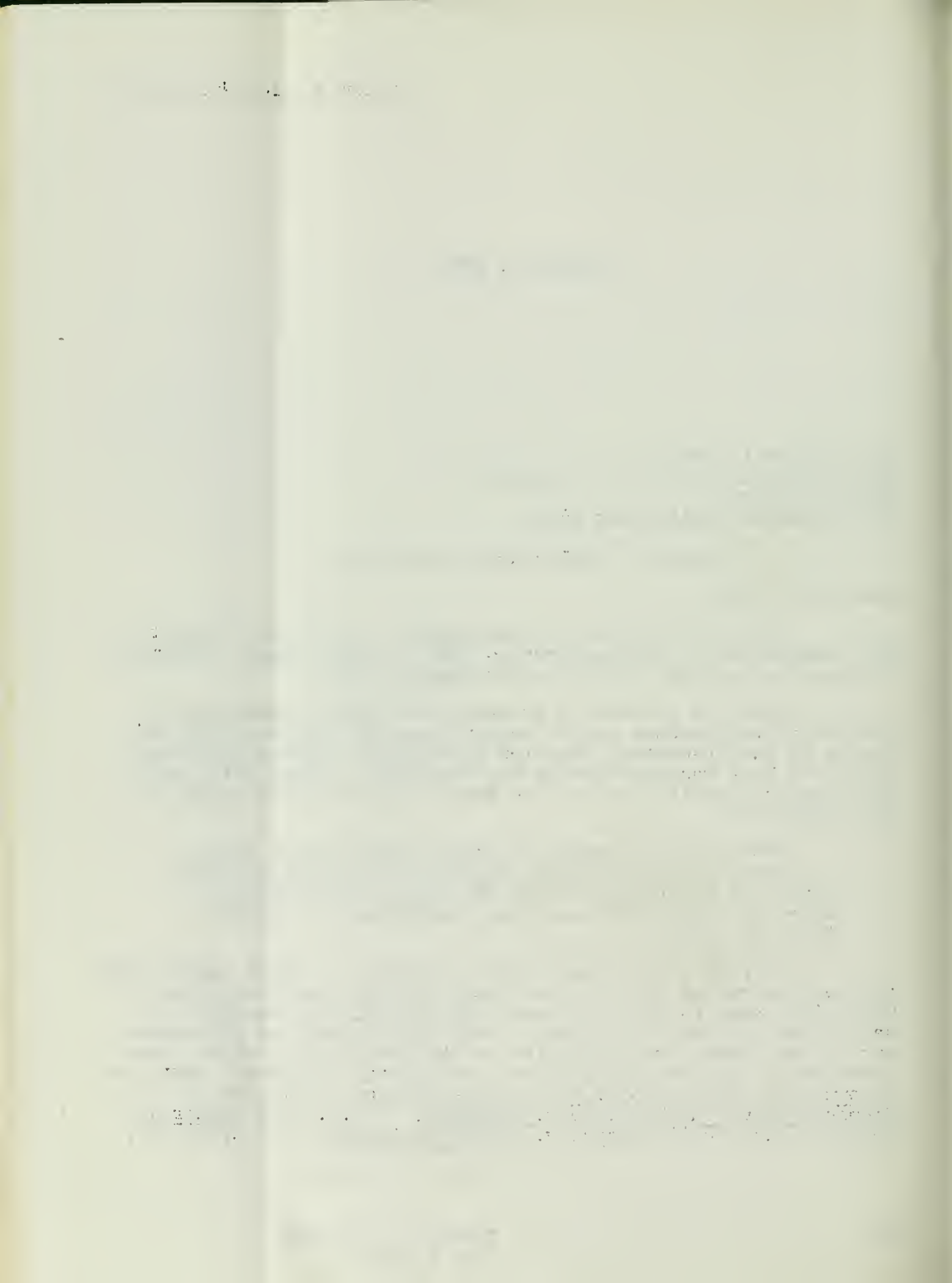
It is the opinion of this office that the San Francisco Port Commission is not required to file a public agency statement pursuant to Section 5305 of the Government Code.

There is no statute or other law which establishes the Port as an independent public entity separate from the City and County of San Francisco. Section 48.2 of the Charter, pursuant to which the Port was acquired by San Francisco, places full jurisdictional responsibility for the Port in the City and County of San Francisco:

"The City and County of San Francisco shall accept the transfer and assume jurisdiction and control of the harbor of San Francisco and the facilities thereof in accordance with the terms and conditions of Statutes 1968, ch. 1333."

The Port has a legal position similar to other departments and commissions of the City and County of San Francisco, none of which file rosters with the Secretary of State for purposes of satisfying the Tort Claims Act. Such commissions and departments are in law immune from liability on the basis that they are subdivisions of the municipality and not separate corporate entities. (Brownlee v. Dalton Board of Water Commission, 1 S.E. 2d 599; Glenon, Clewe and Van Dine v. Andriano, 99 C.A. 607; Tanner v. Best, 40 C.A. 2d 442; Lazar v. Estate of Lazar, 208 C.A. 2d 554.)

Very truly yours,



October 8, 1969

Alfred G. Arnaud
Assistant Deputy Chief of Police
Hall of Justice
850 Bryant Street
San Francisco, California 94103

Subject: Auctioneer's Permit -- Residence
Requirement of Agent of Corporation

Dear Deputy Chief Arnaud:

Reference is made to your letter of August 1, 1969, asking whether a corporation which can show residency in San Francisco satisfies the requirements of Section 1250a of the Police Code, without any showing of personal residence in San Francisco by the applying corporate officer or agent.

The Police Department's practice of requiring the showing of personal residence under Section 1250a by an officer or agent of the applicant corporation was considered in Letter No. 63-6 of the City Attorney, dated April 8, 1963, and therein found to be valid and constitutional.

Accordingly, you are advised that such a practice still appears valid and is the proper and legal method for a corporation's qualification for an auctioneer's permit under the provisions of Sections 1243-1266 of the Police Code.

Very truly yours,

HDP

THOMAS M. O'CONNOR
City Attorney

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October 8, 1969

Mr. S. M. Tatarian
Director of Public Works
Room 260, City Hall
San Francisco, California 94102

Re: Must Public Works Accept the Board of
Permit Appeals' Decision at 3071 $\frac{1}{2}$
California Street

Dear Mr. Tatarian:

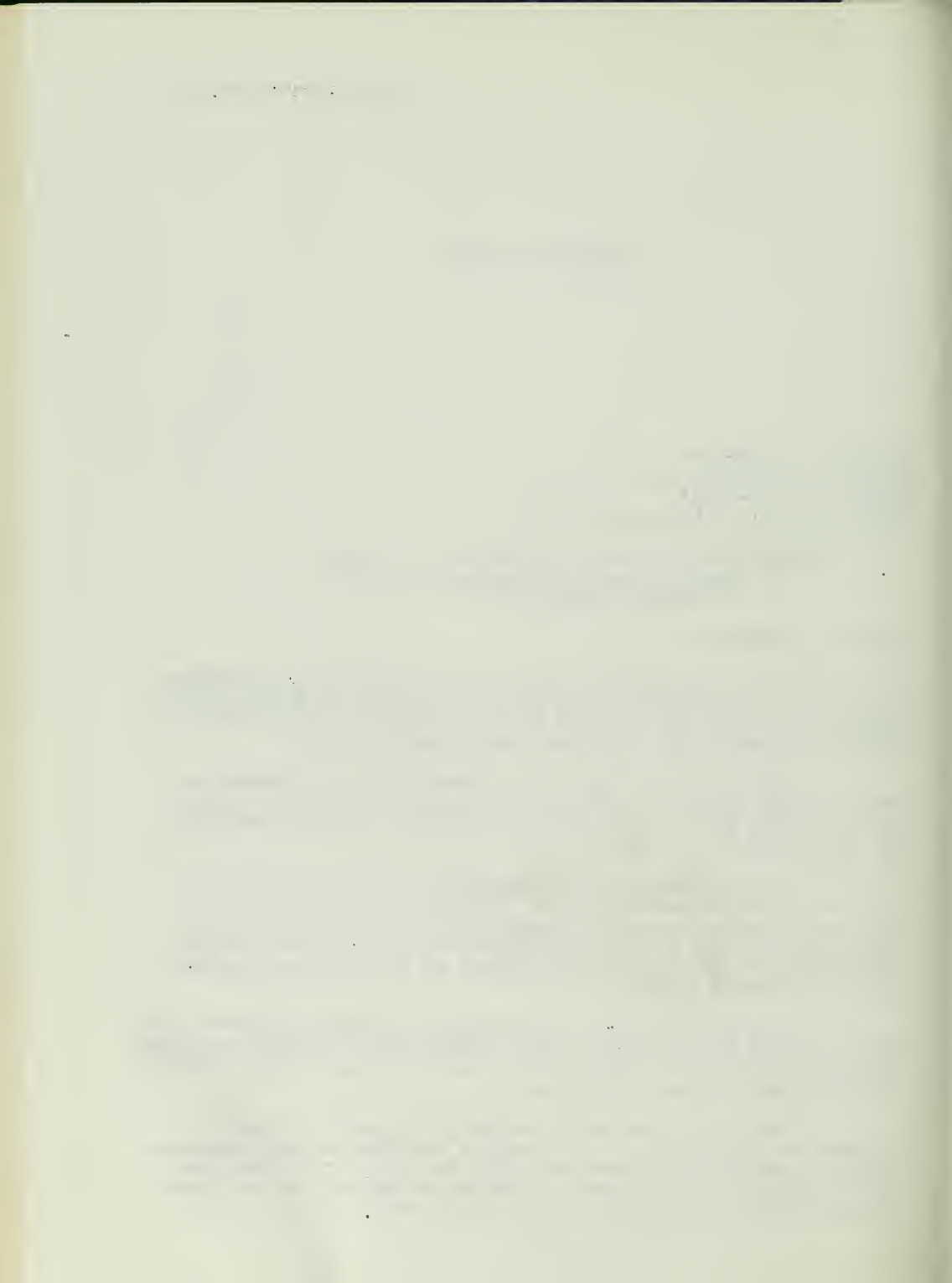
This is in reply to your letter wherein you requested my opinion as to whether or not the Department of Public Works must comply with the Board of Permit Appeals' decision and issue a building permit for the above mentioned address.

Many of the alleged violations of the San Francisco Housing Code or other applicable codes and ordinances at the above address depend upon the date or dates when the building was converted to its present use.

It is evidently the position of the building owner that the building was converted to its present use at a time which would make the code sections in question inapplicable; it is the position of the Department of Public Works that the conversion of the building took place at a date when the code provisions would apply.

The building permit application was denied because the owner refused to stipulate to the correction of conditions which he believed did not apply to his structure because of the date of conversion to its present use.

Hearing the matter on appeal, the Board of Permit Appeals determined that the structure in question was converted to its present use at least as early as 1940. This decision was based upon the affidavit of Nathaniel Harvey who had been working around the structure since that date.



Mr. S. M. Tatarian

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October 8, 1969

The Department of Public Works has applications on file which indicate that as recently as 1967 the same owner has described his structure's use as contrary to that indicated in the affidavit of Mr. Harvey. (Inspection report of William Sheehy dated May 26, 1969, paragraph 15.)

The Board of Permit Appeals was informed by your department's letter of June 19, 1969, that no permits were on file to convert this structure from its original use as a two-unit dwelling to its present use as a three-unit building but evidently no mention was made of the fact that the owner himself, in his 1967 building permit applications, referred to the structure in question as a two-unit dwelling. It should be pointed out, though, that in the application for a building permit which is the subject of this appeal, the owner does refer to his structure as being presently used as a three-unit dwelling. (Application for Building Permit dated December 4, 1968.)

Section 39 of the Charter of the City and County of San Francisco states that the Board of Permit Appeals may, after hearing a matter, "concur in the action of the department authorized to issue such license or permit, or, by the vote of four members, may overrule the action of such department and order the permit or license be granted or refused."

Pursuant to this section, the Board of Permit Appeals reviewed the matter and found there was sufficient evidence to support a finding that the structure in question was converted to its present use at least back to the year 1940. Therefore, Article 7, Section 701 of the San Francisco Housing Code would be applicable and the one-hour fire protective materials requirement would not apply to this structure.

This is within the discretion of the Board of Permit Appeals. In Lindell Co. vs. Board of Permit Appeals, 23 Cal.2d 303, the court stated:

"... the Board of Permit Appeals, invested by Charter provision and related municipal ordinances with complete power to hear and determine the entire controversy, was free to draw its own conclusions from conflicting evidence before it and, in the exercise of its independent judgment in the matter, affirm or overrule the action of the Central Permit Bureau." (P. 315; emphasis added.)

Mr. S. M. Tatarian

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This being the finding of the Board, the only remaining violations in the Building Inspection Report of October 4, 1968, are the lack of a sprinkler system along the passageway to the basement apartment and the need for a handrail on the front stairway. The former was stipulated to in the Board's order of June 23, 1969, and the latter was an agreeable condition in the building owner's application for a building permit on December 4, 1968.

Since the appropriate time for requesting a rehearing of this matter before the Board of Permit Appeals has passed, it is my opinion that in this case the building permit should be issued in accordance with the order of the Board of Permit Appeals.

Very truly yours,

MHM

THOMAS M. O'CONNOR
City Attorney

REPORT OF THE PHYSICS DEPARTMENT
FOR THE YEAR 1900-1901

CHICAGO, ILL., 1901

PRINTED BY THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

October 8, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Legislation Requiring the Mayor and
the Chief Administrative Officer to
Conduct Neighborhood Meetings

Dear Mr. Dolan:

In your letter of August 20, 1969, you stated that Supervisor Ronald Pelosi had requested that this office draft legislation, possibly amendatory to the San Francisco Administrative Code, which would require the Mayor and the Chief Administrative Officer or their representatives to conduct neighborhood meetings for the purpose of informing the citizenry about major developments instituted by the City and County government.

It is my opinion that any legislation which would require the Mayor and the Chief Administrative Officer to conduct such meetings would constitute an interference by the Board in administrative matters and would be contrary to the provisions of Section 22 of the San Francisco Charter.

Section 22 provides in part as follows:

"Neither the board of supervisors, nor its committees, nor any of its members shall dictate, suggest or interfere with appointments, promotions, compensations, disciplinary actions, contracts, requisitions for purchases or other administrative recommendations or actions of the chief administrative officer, or under the respective boards and commissions. The board of supervisors, and each board or commission relative to the affairs of its own department, shall

Mr. Robert J. Dolan

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deal with administrative matters only in the manner provided by this charter, and any dictation, suggestions or interference herein prohibited on the part of any supervisor or member of a board or commission shall constitute official misconduct"

A comprehensive treatment of the purport and effect of Charter Section 22 may be found in Opinion No. 908, addressed to your Board, dated December 3, 1954. Certain observations made therein are of value in resolving the present issue. Hence, I quote therefrom, as follows, regarding Section 22:

"As indicated in the language of Section 22, certain proscriptions are therein expressed against 'interference' by the Board of Supervisors in administrative matters, control over which is reposed by the Charter in other officers, boards or commissions." (page 2)

"Preliminarily, and by way of pinpointing the purport of Section 22, it should be noted that the section is threaded throughout with the thought that the Charter-prescribed division of powers and duties is to be maintained inviolate against encroachment by inter-office or inter-departmental action." (page 3)

"Especially manifest in Section 22 is the mandate that there be a constant cleavage between the repositories of legislative and administrative powers, and this for the purpose of divorcing the Board of Supervisors from authority to administer the law and limiting the Board to the exercise of its power to create the law." (page 3)

The Charter entrusted to the Mayor and the Chief Administrative Officer a large and important class of duties, but the manner of performance is mainly left within their sound discretion.

The Mayor and the Chief Administrative Officer, in their respective capacities as chief executive officer of the City and County (Charter Section 25), and as the officer responsible for the administration of all affairs of the City and County that are placed in his charge (Charter Section 60), have the discretionary power to conduct such meetings if they should deem them necessary and in the public interest.

While the Board of Supervisors could confer additional powers on the Mayor and the Chief Administrative Officer (Charter

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Section 9), the Charter does not authorize the Board of Supervisors to impose additional duties of the nature here proposed.

You are advised, therefore, that for the above stated reasons such proposed legislation is contrary to the provisions of the Charter and cannot be enacted.

Very truly yours,

WAB

THOMAS M. O'CONNOR
City Attorney

October 7, 1969

Honorable Terry A. Francois
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Procedure Necessary to Create
Department of Corrections to
Administer County Jails and
City Prisons

Dear Supervisor Francois:

This refers to your request for an opinion concerning the creation of a Department of Corrections. You state that "A Report on the San Francisco County Jails and City Prison," prepared by the San Francisco Committee on Crime, includes a recommendation that the county jails, administered by the sheriff, as well as the city prison under jurisdiction of the Police Department, be administered by a new department of custody or corrections.

Section 8-1/2 of Article XI of the Constitution of the State of California grants to any city or consolidated city and county the plenary authority to provide by charter for "the manner in which, the method by which, the times at which, and the terms for which the several county and municipal officers and employees whose compensation is paid by such city or city and county, excepting judges of the superior court, shall be elected or appointed, and for their recall and removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have. . ." San Francisco, having framed its charter under Section 8 of Article XI, has the authority to provide for the county office of sheriff in its charter. Charter Section 32 provides for the office of sheriff as an elective officer. The sheriff is a county officer pursuant to Government Code Section 24000. Charter Section 18 provides that "Each county officer shall have all the powers conferred and shall discharge all the duties imposed by general laws upon said officer of a county or a city

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and county of this state, and shall have such other powers and duties as in this charter specifically provided."

The sheriff as a county officer has powers and duties conferred upon him by state law. A number of sections in the state codes specifically designate the sheriff as the sole officer to exercise authority and charge him with the duties and responsibilities in connection with prisoners and the county jail. See Appendix A at the end of this opinion for list of sections.

It is clear that pursuant to the State Constitution, San Francisco has provided by charter that the sheriff shall have the powers and duties conferred on him by state law, which includes the charge of the county jail system.

In 1957 the Legislature enacted Government Code Section 23013 which reads as follows:

"§ 23013. Department of corrections; establishment; jurisdiction; joint department of corrections in two or more counties.

"The board of supervisors of any county may, by resolution, establish a department of corrections, to be headed by an officer appointed by the board, which shall have jurisdiction over all county functions, personnel, and facilities, or so many as the board names in its resolution, relating to institutional punishment, care, treatment, and rehabilitation of prisoners, including, but not limited to, the county jail and industrial farm and road camps, their functions and personnel.

"The boards of supervisors of two or more counties may, by agreement and the enactment of ordinances in conformity thereto, establish a joint department of corrections to serve all the counties included in the agreement, to be headed by an officer appointed by the boards jointly."

The questions presented are:

1. Does Government Code Section 23013 authorize the Board of Supervisors to divest the sheriff of his functions, powers, duties and responsibilities with respect to the county jail and the prisoners therein and permit the Board of Supervisors to vest them

Honorable Terry A. Francois 3

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in a director of a department of corrections who would operate and manage and exercise all functions with respect to the jails?

or

2. Does Government Code Section 23013 contemplate the establishment of a department under a director which would have the power to supervise and control the institutional punishment, care, treatment and rehabilitation of prisoners in the jail which would be in charge of the sheriff who would continue to operate and manage the jail but be subject to power of supervision and control of the department of corrections and its director?

It is my opinion that the answer to question 1 is "no," and the answer to question 2 is "yes."

My reasons for construing Section 23013 in the more limited manner as set out in 2 are as follows:

1. It is a general rule of construction that a special statute controls a general statute without regard to the dates of their passage and a special statute relating to a subject is not repealed by a general statute on the subject unless the intention of the Legislature to repeal or alter the special statute is manifest. Also, statutes must receive a reasonable and commonsense construction. Section 23013 does not specifically provide for the divestiture of the functions, powers, authorities, responsibilities and duties of the sheriff under the laws cited in Appendix A to this opinion and the transfer of them to the director of the department of corrections and it is not reasonable to so construe this general law so as to accomplish this result when no mention is made of the sheriff or of the laws providing for his powers, duties, responsibilities and liabilities in connection with the county jails and the section is placed in a remote part of the Government Code and not at all in the Penal Code.

2. Legislative enactments, since the enactment of Section 23013 of the Government Code, have imposed management and operation functions and responsibilities on the sheriff in connection with the county jails and have made no exception for counties which may have established a department of corrections, thus indicating the legislative contemplation and understanding that the operation and management of the county jails remain in the sheriff. See, for example, Section 4020.4 of the Penal Code which was amended in 1969 to make it a mandatory duty on the sheriff to appoint a female deputy sheriff to have charge of female prisoners in counties with

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a population above 275,000, and Section 4018.1 added to the Penal Code in 1969 providing for the deduction by the sheriff of 5 days from a period of confinement for satisfactory performance of labor assigned by the sheriff.

3. The word "jurisdiction" is often used ambiguously and the limited interpretation of the word is more reasonable than the broad interpretation.

4. The words "institutional punishment, care, treatment and rehabilitation" do not describe all the functions of the sheriff in connection with the county jail and the prisoners therein such as custody, detention and transfer and removal of prisoners. The words "institutional punishment" of prisoners refer to discipline administered to prisoners within the prison and do not import the idea of custody and detention. It is to be noted that the word "custody" is used throughout the above cited laws. This factor, plus the fact that the board of supervisors may act on "so many as the board names in its resolution," indicates a limited interpretation. If operation and management were intended it would have to embrace all the functions in the jail. The sheriff could not be operating and managing one part of the jail and the director of the department of corrections operating and managing another part.

5. Although the word "functions" imports duties and responsibilities as well as powers, the word is not adequate to impose the liabilities on a director of a department of corrections that are imposed on the sheriff in his operation and management of the jail and in his custody and control of the prisoners and their property under the laws set out in Appendix A to this opinion. Also, the statute does not designate the director as a county officer or provide that he post a bond.

6. The sheriff and his deputies now managing and operating the jail are peace officers. The director and any persons appointed by him would not be peace officers.

7. Inquiry concerning the legislative history of the section has not produced any significant evidence of intent. However, at the same session of the Legislature in 1957, in which Section 23013 was enacted, the Legislature enacted Chapter 1.5, Sections 4050-4067, of the Penal Code providing for the establishment of a joint county jail and in this law it was specifically provided that the provisions of Chapter 1, Sections 4000 to 4026, of the Penal Code relating to county jails would be applicable to the joint

Honorable Terry A. Francois

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county jail and that the person appointed by the board of directors to superintend the joint county jail would have such powers and duties as the sheriff with respect to county jails under Chapter 1.

Also, when the State Department of Corrections was created, Sections 5000 et seq. of the Penal Code, Section 5002 specifically provided that the department should succeed to and be vested with all of the powers and duties exercised and performed by the then existing departments, boards, commissions and officers charged with powers and responsibilities relating to prisons and prisoners. Significantly, with reference to those directly in charge of the prisons, the statute provided "The powers and duties of wardens of the state prisons and the California Institution for Men presently or hereafter expressly vested by law in them shall be exercised by them but such exercise shall be subject to the supervision and control of the Director of Corrections." (Section 5002(d).) In the absence of more specific language in Section 23013, it is reasonable to assume that the section was enacted with the intent that the county department of corrections operate analogously to the State Department of Corrections as far as operation and management of the jails is concerned, and thus, Section 5002(d) quoted above directly supports the limited interpretation of Section 23013.

8. If the provisions in the last paragraph of Section 23013 providing for an intercounty department of corrections were construed to mean the operation of a joint county jail, this provision would be duplicative of Sections 4050 to 4067 of the Penal Code above mentioned providing for joint county jails which was enacted at the same session of the Legislature. Also, detailed provisions and specifications of power and authority where operation is clearly contemplated as it is in the provisions of Sections 4050 to 4067 should be noted.

9. It is essential to due process that the commitment, confinement and custody of prisoners be made in the manner specified by law and the authority to receive, confine and have custody of prisoners is too vital a power to be premised on an ambiguous statute or to be ascertained by implication.

You are advised, therefore, that the sheriff may not be divested of functions, powers, duties and responsibilities with reference to the county jail, but that the Board of Supervisors can establish a department under a director which could have the power to supervise and control "institutional punishment, care, treatment and rehabilitation" of prisoners in the county jail. The sheriff must have the control necessary to operate and manage

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October 7, 1969

the jail under the laws cited in Appendix A, which set forth his duties, rights and responsibilities. The sheriff, however, can be made subject to such power of supervision and control as the Board may deem advisable to confer on a department of corrections and the director in the area of "institutional punishment, care, treatment and rehabilitation of prisoners."

You also request advice with respect to procedures required to place the city prison under a department of corrections. Penal Code Sections 404.5 and 4022 and Government Code 36903 provide for the maintenance of a city prison at the discretion of municipal authority. In my letter opinion of September 10, 1968, (No. 68-67) I advised that there is no provision in the City Charter or City codes relating to the jurisdiction of the city jail by the Police Department. The Board of Supervisors, under provisions of Section 9 of the charter, could transfer jurisdiction over functions of the city jail to a department of corrections by appropriate legislation.

You are thus advised.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

Enclosure

APPENDIX A

PENAL CODE

- § 19b Sheriff may transfer prisoners committed to any jail in the county to any industrial road camp maintained by the county.
- § 872- Order of commitment of persons accused and held to answer
877a for offenses is directed to sheriff who is commanded to receive the person into his custody and detain him until he is legally discharged.
- § 1026 Defendant remanded to custody of sheriff until his sanity shall have been finally determined.
- § 1037 Transfer of defendants by sheriff of one county to custody of sheriff of another county when action is removed.
- § 1200 Provides for the appointment by the board of supervisors of a prisoner's work furlough administrator for the county which shall be either the sheriff, the probation officer or the superintendent of the county industrial farm or industrial road camp.
- § 1208.5 Provides for transfer by sheriffs between counties of prisoners eligible for work furlough programs.
- § 1216- Delivery of prisoners to state prison by sheriff after
1217 conviction.
- § 1244 Sheriff to keep defendant in custody pending judgment on appeal.
- § 1286 Sheriff to hold defendant accused of capital offense.
- § 1567 Sheriff to execute order to bring persons in prison in a county jail before a court sitting in another county.
- § 2903 Sheriff may make application to court to commit women prisoners in California Institution for Women in lieu of placement in county jail.
- § 3075 Sheriff one of three members of county board of parole commissioners.
- § 4000 Sheriffs of the respective counties designated as keepers of the county jails.

- § 4004 Orders for removal from county jail in custody of sheriff.
- § 4005 Duty of sheriff to receive and keep federal prisoners in county jail.
- § 4006 Sheriff answerable to federal court for safekeeping of federal prisoners.
- § 4007- Authority of sheriff to remove county jail prisoners to
4011 state prison for safekeeping and to request court to authorize such removal for proper medical treatment.
- § 4014 Sheriff authorized to employ temporary guards for protection in county jail and safekeeping of prisoners.
- § 4015 Sheriff must receive all prisoners committed to jail by competent authority. Board of supervisors to provide sheriff with necessary food, clothing and bedding for such prisoners.
- § 4018.5 Sheriff may provide for vocational training and rehabilitation of prisoners confined in county jail.
- § 4018.1- Sheriff may order deduction of five days from period of
4019 confinement in county jail for satisfactory performance of labor assigned by sheriff or satisfactory compliance with rules and regulations established by sheriff.
- § 4020.4 Sheriff to appoint female deputy sheriff to have charge of female prisoners in counties having a population of more than 275,000.
- § 4021 Sheriff to designate woman to have care of female prisoners when no female deputy sheriff appointed in counties of less than 275,000 population.
- § 4023 Sheriff to designate physician for county jail.
- § 4024 Sheriff to discharge prisoners from county jail at such time on last day of confinement as sheriff considers in best interest of prisoner.
- § 4025 Sheriff to establish and maintain and operate store in connection with county jail and to expend money deposited in inmate welfare fund.
- § 4114 Sheriff to appoint members of county classification committee in connection with industrial farm or camp.

- § 4115 County jail to serve as initial place of detention for prisoners committed to custody of sheriff.
- § 4116 Commitments to be made to sheriff for placement in county adult detention facility.
- § 4300- Sheriff to appoint two members of the county advisory
4305 committee on adult detention.
- § 4573 Makes it a felony to bring narcotics or alcoholic beverages into any county jail where prisoners or inmates are located in custody of any sheriff.
- § 6303 Sheriff or any other peace officer designated by the court to execute court order placing county prisoner in jail camp.

GOVERNMENT CODE

- § 25359 Sheriff to appoint person to direct work of prisoners confined in county jails on county property.
- § 26605 Sheriff shall take charge of and keep county jail and the prisoners in it.
- § 26610 The sheriff has the same control and supervision of the property, personnel and inmates of county jail maintained in another county that he would have if the jail were located within the boundaries of the county which maintains it.
- § 26640 The sheriff shall take charge of, safely keep and maintain an accounting of all property of prisoners in county jail. He shall pay money or deliver property as prisoner directs and deliver remainder of money and property to prisoner on his release.
- § 26642 Sheriff shall pay into the general fund of county any money of a prisoner from the proceeds of the sale of his valuables remaining unclaimed for a period of one year after his release or five years after his death.
- § 26643 When any prisoner dies or becomes insane, the sheriff shall make diligent effort to communicate the fact to friends or relatives of the prisoner, together with information on the state of the prisoner's account.

- § 26645 The sheriff liable on his official bond for failure to
 comply with foregoing sections.
- § 26681 The sheriff liable for escape of prisoner arrested in
 civil action.
- § 26682 Sheriff liable for the rescue of a person arrested in
 a civil action equally as in an escape.

October 21, 1969

John J. Ferdon
District Attorney
Hall of Justice
850 Bryant Street
San Francisco, Calif. 94103

Attention of Miss Mary I. Callanan,
Administrative Assistant

Subject: Volunteer Work for Bail Project Being
in Conflict With Civil Service Duties
in District Attorney's Office

Dear Mr. Ferdon:

This is in reply to your letter regarding a permanent civil service (part-time) employee in the office of the District Attorney who works during off-duty hours as a VISTA volunteer in the San Francisco Bail Project. The employee in question works four hours a day in the District Attorney's office, assigned to the Superior Court Record Room. Her duties include the posting to and filing of confidential files of felony cases prosecuted by the District Attorney. You have made inquiry as to whether the volunteer activities of the employee would be considered as inconsistent, incompatible or in conflict with her duties performed in the District Attorney's office.

The answer to the question presented involves a consideration of the second paragraph of Section 222 of the Charter of the City and County of San Francisco, which reads as follows:

"No supervisor and no officer or employee of the city and county shall engage in any activity, employment or business or professional work or enterprise which is inconsistent, incompatible, or in conflict with his duties as a supervisor or officer or employee of the city and county or with the duties, functions and responsibilities of his appointing power, or the department, office or agency by which he is employed, or the board or commission of which he is a member."

John J. Ferdon

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October 21, 1969

The pertinent provisions of Section 222 set forth above provide that no employee of the City and County shall engage in any activity, employment or business or professional work or enterprise which is inconsistent, incompatible or in conflict with his duties as an employee, or with the duties, functions or responsibilities of the office by which he is employed.

Since there are no certain and comprehensive definitions of what constitutes inconsistency, incompatibility, or conflict of interest, each case must be determined on its own particular facts. To assist the policy behind the charter section above quoted: ". . . no person can, at one and the same time, faithfully serve two masters representing diverse or inconsistent interests with respect to the service to be performed (Stockton Plumbing and Supply Co. v. Wheeler, 68 Cal. App. 592, 601) may be considered. The usual situation involving a conflict of interest is where there has been a contract or a transaction between a public body and a private legal entity, and an officer of the public body had an interest in the private entity. This is not the present situation.

The third paragraph of Section 222 of the Charter provides that the Civil Service Commission may prescribe and enforce reasonable rules and regulations restricting activities, employments and enterprises. Civil Service Rule 36 attempts to regulate part-time employment which is performed in addition to full-time civil service employment. It provides, in part, that no person holding a full-time position under a permanent civil service appointment shall engage in any employment for which he is to receive any compensation. Rule 36 would not appear to be applicable to the employee presently under consideration since the employee is not holding a full-time position with the City and County of San Francisco and is not being paid for her activity with the San Francisco Bail Project.

Apart from any Civil Service Rule, the particular facts of this case must be carefully and fully considered in order to determine whether the volunteer activities of the employee are inconsistent, incompatible or in conflict with either the employee's duties performed in the District Attorney's office or with the duties, functions or responsibilities of the District Attorney's office.

The employee's duties, briefly referred to above, consist solely of posting to and filing of files in the Superior Court Record Room.



John J. Ferdon

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October 21, 1969

The duty of the office of the District Attorney, as set forth in Charter Section 29, is to ". . . prosecute all criminal cases in the municipal and superior courts, draw all complaints, and issue warrants for the arrest of persons charged with crime who are to be prosecuted in such courts."

The employee's off-duty hours are spent as a VISTA volunteer in the San Francisco Bail Project, a program under which arrested persons may be released on their own recognizance. The Project--initiated in 1964 by the San Francisco Bar Association, adopted by the Municipal Court Bench and supported by the Superior Court judges--is a natural extension of the basic principle of the American system of jurisprudence that innocence is presumed until guilt is proven, and of the importance of bail to assure release before trial as recognized in the Eighth Amendment to the United States Constitution. The Bail Project has received the cooperation of the San Francisco Police Department, the Adult Probation Department, the Board of Supervisors of the City and County of San Francisco, and the office of the District Attorney. VISTA, the domestic Peace Corps, provides personnel to interview prisoners, check references, and make the necessary recommendations.

It is evident that there is no per se inconsistency, incompatibility or conflict of interest between the duties of a file clerk in the District Attorney's office and that employee's volunteer service to the Bail Project. The employee's interest in the Bail Project would not appear to prevent her exercising absolute loyalty and undivided allegiance to the best interest of her employer in her duties as a file clerk.

In addition, I am of the opinion that the employee's volunteer services to the Bail Project are not inconsistent, incompatible, or in conflict with the duties, functions or responsibilities of the office of the District Attorney.

Very truly yours,

GEK

THOMAS M. O'CONNOR
City Attorney

October 27, 1969

Mr. George J. Grubb
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Re: Amendment to Salary Standardization
Ordinance re "Hazard Pay" During
Fiscal Year

Dear Mr. Grubb:

This is in reply to your letter of October 20, 1969, inquiring whether the Salary Standardization Ordinance for fiscal year 1969-70 can be amended at this time to provide a current "hazard pay" differential to certain clerical employees at the Center for Special Problems, Department of Public Health.

The Center for Special Problems renders treatment on an outpatient basis to persons with problems involving alcohol, drug, sex, crime, delinquency and suicide. It has come to the attention of the Civil Service staff that the administrative personnel assigned to the Center have been subjected to bizarre conduct by some of the patients and this has caused concern for the safety of such employees. As a result, the staff conducted a survey of the working conditions at the Center and rendered a report to the Civil Service Commission making certain recommendations, including an in-service training program for the employees, a review of safety and emergency procedures and a classification survey of the subject positions. The Civil Service Commission, at its meeting of September 2, 1969, approved the recommendations and further directed that the seven clerical employees should receive "hazard pay" until such time as the reclassification of the positions is completed.

The question is now presented whether the Salary Standardization Ordinance for 1969-70 may be amended at this time to be effective this current fiscal year to provide for "hazard pay"

Mr. George J. Grubb

2

October 27, 1969

to the designated administrative personnel of the Center for Special Problems.

Section 151 of the Charter provides in part as follows:

"Not later than January 15th, 1944, and every five years thereafter and more often if in the judgment of the civil service commission or the board of supervisors economic conditions have changed to the extent that revision of existing schedules may be warranted in order to reflect current prevailing conditions, the civil service commission shall prepare and submit to the board of supervisors a schedule of compensations as in this section provided. A schedule of compensations or amendments thereto as provided herein which is adopted by the board of supervisors on or before April 1st of any year shall become effective at the beginning of the next succeeding fiscal year and a schedule of compensations or amendments thereto adopted by the board of supervisors after April 1st of any year shall not become effective until the beginning of the second succeeding fiscal year."

The language of Section 151 clearly requires that if a schedule of compensations or amendment thereto is adopted prior to April 1, it will not be effective until the beginning of the next succeeding fiscal year; and a schedule of compensations or amendment thereto adopted after April 1 will not be effective until the beginning of the second succeeding fiscal year. Thus, if the Board of Supervisors currently enacts an amendment to the Salary Standardization Ordinance for 1969-70 to provide for the subject "hazard pay," the amendment could not be effective until the beginning of the fiscal year 1970-71. (See City Attorney Opinions No. 69-52, dated April 29, 1969; and No. 68-55, dated July 1, 1968.)

Retroactive amendment of the Salary Standardization Ordinance has been authorized where it is shown that the omission in the ordinance was due to administrative or clerical error, but there is no indication from your request or accompanying reports that the omission of "hazard pay" was the result of such error. It is therefore my opinion that the Salary Standardization Ordinance for 1969-70 cannot be currently amended to provide "hazard pay" during this fiscal year.

You are thus advised.

Very truly yours,

MCK

THOMAS M. O'CONNOR
City Attorney

October 24, 1969

Mr. Lyle J. O'Connell
Executive Director
Health Service System
450 McAllister Street
San Francisco, California 94102

Re: Effect of Homeowners', Business Inventories
and Householders' Personal Property Exemptions
on Value of Property for Purpose of Computing
Limitation on Matching Contributions to Health
Service System Under Charter Section 172.1.11

Dear Mr. O'Connell:

This is in response to your request for my opinion as to the effect of the tax exemptions granted by the constitutional and statutory provisions adopted in 1968 relating to homeowners', business inventories and householders' personal property in determining the limitations under Charter Section 172.1.11 upon the matching contributions to be made to the Health Service System by the City and County and the Unified School District.

Subparagraph (b) of Section 172.1.11 requires contributions by the City and County and the Unified School District as follows:

"(b) Matching contributions for the fiscal year commencing July 1, 1962, and each fiscal year thereafter, equal to the amounts contributed thereto by members of the system, provided, however, that the total amount contributed to the health service system fund in each fiscal year, for this purpose, shall not exceed an amount equal to the tax yield that can be produced in each fiscal year by six cents in the tax rate of each one hundred dollars (\$100.00) valuation of the real and tangible personal property assessed in and subject to taxation by the city and county and the school district."

Mr. Lyle J. O'Connell

2

October 24, 1969

The words "assessed in and subject to taxation by the city and county and the school district" qualify the words "real and tangible personal property." Therefore, your inquiry involves a determination of whether the real and tangible personal property to which the homeowners', business inventories and householders' exemptions attach is "assessed in and subject to taxation by the city and county and the school district."

Section 1d of Article XIII of the California Constitution (Homeowners' Property Tax Exemption) provides in part as follows:

"There is exempt from taxation the amount of \$750 of the assessed value of the dwelling and this shall be known as the homeowners' property tax exemption."

Section 219 of the Revenue and Taxation Code (Business Inventories Exemption) provides:

"Business inventories shall be assessed for taxation at the same ratio of assessed to full cash value as the ratio specified in Section 401. After such property has been so assessed, 15% of the assessed value of such property shall be exempt from taxation and such exemption shall be indicated on the assessment roll."

As can be seen, the property involved in the foregoing constitutional and statutory provisions is both assessed and subject to taxation. These provisions merely provide for a tax deduction or credit computed on a portion of the assessed value. The yield represented by these credits is paid directly to the City and County by the State of California. Therefore, in computing the limitation under Section 172.1.11 upon the matching contributions to be made by the City and County and the Unified School District, the full assessed value of property subject to the homeowners' and business inventories tax should be used, as this is the property "assessed in and subject to taxation by the city and county and the school district."

However, an opposite conclusion must be reached with respect to the householders' personal property tax exemption. Section 10-1/2 of Article XIII of the California Constitution provides as follows:

Mr. Lyle J. O'Connell

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October 24, 1969

"The personal property of every householder to the amount of one hundred dollars, the articles to be selected by each householder, shall be exempt from taxation."

This constitutional provision is supplemented by Section 224 of the Revenue and Taxation Code as follows:

"The personal effects and household furnishings in excess of one hundred dollars (\$100.00) of every householder shall be exempt from taxation."

Thus, in the case of householders' personal property, there is an exemption of the property itself. Consequently, householders' personal property is not property "assessed in and subject to taxation by the city and county and the school district." Accordingly, the assessed value of such property is not to be considered in your computation of the limitation upon the matching contributions to be made by the City and County and the Unified School District.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

DJG

November 7, 1969

Mr. Philip P. Engler, Acting Clerk
Board of Supervisors
235 City Hall
San Francisco, California

Subject: Property Tax; Board of Supervisors;
Submission of Policy Declaration Re
Different Assessment Ratios on
Property Subject Thereto; Endorsing
State Initiative in Connection Therewith

Dear Mr. Engler:

You have requested my opinion on the following questions:

1. Does the Board of Supervisors have the authority to include on the ballot at a future election to be held within the City and County of San Francisco, a declaration of policy with respect to the establishment of a different assessment ratio for various types of property.

2. Can the people be asked whether or not they would desire a constitutional amendment to change the present assessment ratio.

3. Can the Board of Supervisors adopt a resolution stating that it approves and supports an initiative throughout the State seeking a constitutional amendment to correct the present inequitable method of assessing property in California.

With respect to your first and second questions, the Charter provides that the Board of Supervisors may submit any declaration of policy to the electorate and, if the same is approved by a majority of the qualified electors voting thereon, it then becomes the duty of the Board to enact an ordinance to carry such policy into effect. (Charter, Sec. 179.)

In Farley v. Healey (1967), 67 Cal.2d 325, the State

Mr. Philip P. Engler

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November 7, 1969

Supreme Court interpreted Section 179 as authorizing the submission of "any" declaration of policy to the electorate and the fact that the Board's duty "to carry . . . into effect" approved policies is inoperative when the policy is beyond the power of the Board to effectuate, affords no basis for restricting the right to declare the policy.

Accordingly, it is my opinion that the Board of Supervisors has authority to include on the ballot at a future election to be held within the City and County of San Francisco, a declaration of policy with respect to the establishment of a different assessment ratio for various types of property despite the fact that the Board's duty to carry said policy into effect is inoperative as being beyond the power of said Board. By the same token, the people could be asked to express the popular will by way of a declaration of policy with respect to a constitutional amendment to change the present assessment ratio even though the Board of Supervisors of the City and County of San Francisco is powerless to effectuate such policy.

With respect to your third and final question, the Board of Supervisors, on at least five occasions in the past three years, has endorsed and urged approval of state legislation which would authorize imposition of at least two assessment ratios in order to reduce the tax burden on residential property. (Res. Nos. 97-67; 311-67; 434-67; 102-68; and 9-69.) While it is true that each one of these resolutions was directed to the State Legislature as the body primarily responsible for taking action consistent with the intent of said resolutions, the same appeal could be directed to the electors of the state to whom is reserved the power to propose statutes and amendments to the Constitution and to adopt or reject them. (Const. Art IV, Sec. 22.)

Very truly yours,

JJS

THOMAS M. O'CONNOR
City Attorney

November 12, 1969

San Francisco Public Library
Public Library Commission
Civic Center
Larkin and McAllister Streets
San Francisco, California 94102

Attention of Mr. Robert R. Figone

Re: Right to Restrict Use of Library by
Teacher and School Children as a Group

Members of the Commission:

I write in response to your request of November 6, 1968,
for my opinion concerning the following questions:

1. Can a librarian on duty at a branch during closed hours legally refuse a teacher and school children the right to enter and use the library facilities as a group?
2. Can a librarian legally refuse entrance into the library by a group of school children accompanied by a teacher to use the library during open hours?

In general, in answer to the above questions, the Supreme Court cases have been strict in the assertion of the public's right to use public facilities such as libraries. Of course, reasonable regulations are necessary to the orderly operation of all public facilities and institutions. Any regulation which contributes to the orderly operation of our public library facilities, and which is non-discriminatory, would be acceptable. Of course, the ultimate question would be whether or not the rule tends to contribute to the purpose of the public libraries. The question would be:

Since the public library exists for the use, edification, and enjoyment of all the public, does the rule in question conform to that purpose?

Library Commission

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November 12, 1969

In answer to the first question above, it would seem reasonable that if the library can justify "closed hours" for the public in general, then it can justify its refusal to admit any groups, including school groups, during those closed hours.

As to the second question, it would seem more difficult to justify the exclusion of any group during open hours. If it can be shown that the use of library facilities by groups of school children during open hours interferes with the general public's right to use the library facilities, then perhaps reasonable rules regulating groups of school children during open hours could be justified. Such rules would have to be carefully and, in fact, narrowly drawn. A rule which limited groups of school children to enter only after 4 p.m. on weekdays, or on weekends, would appear too broad and, in fact, discriminatory.

Unless it can be shown that the rights of the general public to use the Public Library facilities have been infringed by an excessive use of library facilities by large groups of school children, such groups should not be excluded during open hours.

Very truly yours,

EJN

THOMAS M. O'CONNOR
City Attorney

November 14, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
235 City Hall
San Francisco, California 94102

Re: Art Commission Authority Over
Advertising Signs on Parking Meters

Dear Mr. Dolan:

This is in response to your letter concerning the placement of advertising signs on parking meters in the City and County of San Francisco. I have previously advised you that the Board of Supervisors may legally authorize the sale of advertising space on parking meters. (See Opinion 62-59 of December 31, 1962.) You now inquire as to whether the Art Commission must approve installation of such advertising signs on parking meters.

Section 46 of the Charter of the City and County of San Francisco defines the powers and duties of the Art Commission. Pertinent to the subject of the present inquiry, submission to and approval by the Art Commission are required "with respect to the design of buildings . . . or other structures erected or to be erected upon land belonging to the City and County . . ."

The term "structure" is not defined in Section 46. However, it is clear that the term is used in its ordinary meaning, i.e., something constructed or built. (See Webster's New International Dictionary, 2d Ed.) Therefore, any parking meter composed of wood, metal or other material would, in my opinion, be a "structure" within the meaning of Section 46.

Section 46 gives the Art Commission no jurisdiction over advertising as such. In order for the Art Commission to have jurisdiction of advertising signs on parking meters on City sidewalks, it would be necessary that the design of the

Mr. Robert J. Dolan

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November 14, 1969

parking meter itself be altered by the advertising sign. In Opinion No. 961, dated May 26, 1955, it was ruled that the Art Commission was without jurisdiction over the location or design of signs or billboards which the Public Utilities Commission proposed to install in the Airport Terminal Building on the ground that the signs on the walls of the building did not constitute an alteration in the "design" of the building. In Opinion No. 65-7-A, dated March 16, 1965, it was ruled that the Art Commission was without jurisdiction over advertising to be placed on scoreboards at Kezar Stadium on the ground that neither the design of the stadium nor the design of the scoreboards would be altered by placing advertising on the existing structures.

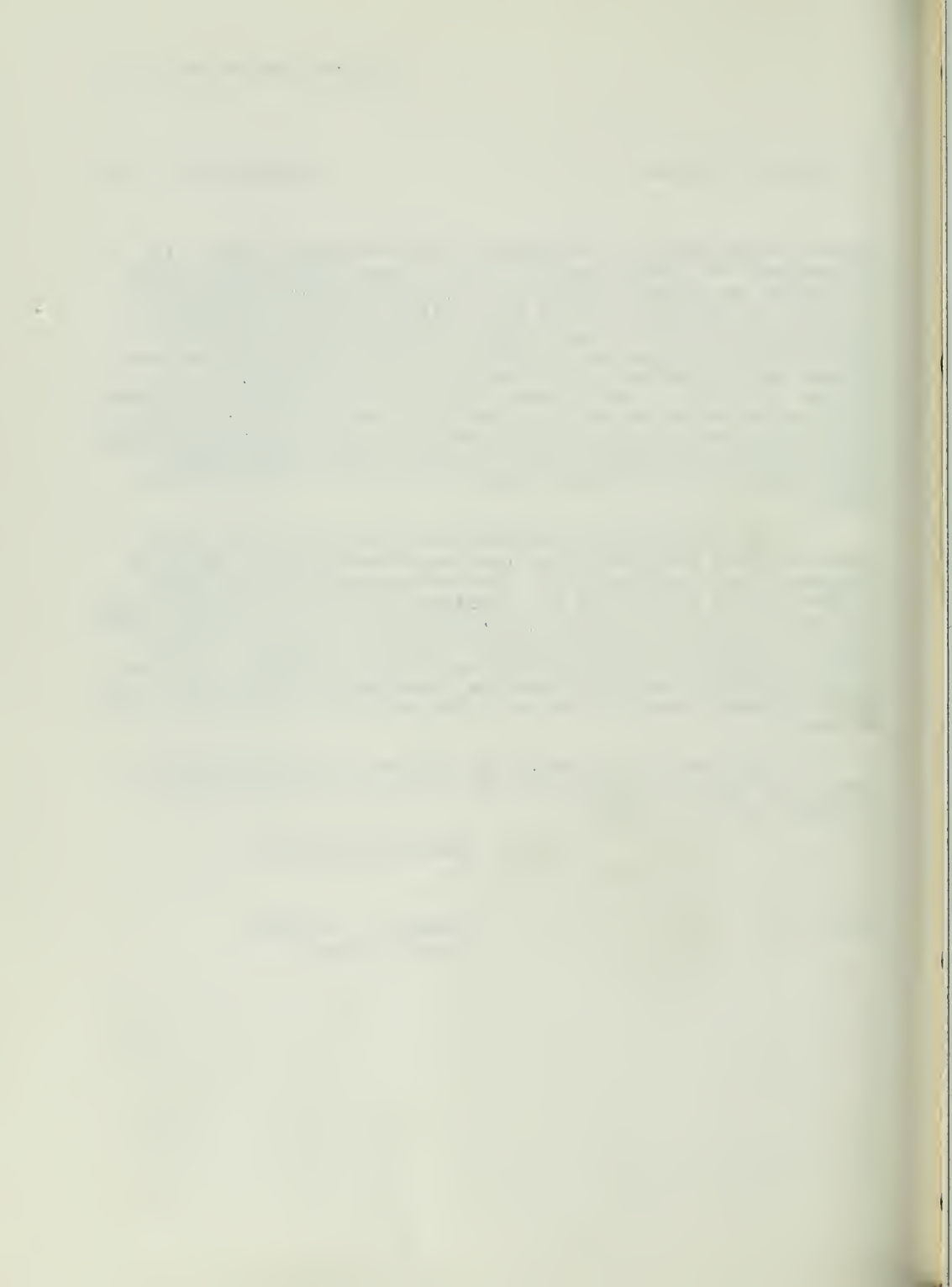
The letter from the advertising company to the Chief Administrative Officer states that two advertisements would be placed on each parking meter. The advertisement would adhere to the parking meter post by adhesive similar to a bumper strip and would not exceed 3 x 3". A photograph of the proposed advertisement placed on a parking meter has been examined. If the actual placement of the advertising signs on parking meters is as portrayed in the letter and the accompanying photograph, I am of the opinion that the design of the parking meter would not be altered.

In view of the foregoing, you are advised that the Art Commission has no jurisdiction in this matter and its prior approval is not required.

Very truly yours,

GEK

THOMAS M. O'CONNOR
City Attorney



November 25, 1969

Mr. Robert J. Dolan
Clerk of the Board of Supervisors
225 City Hall
San Francisco, California 94102

Subject: Consolidation of the Positions of
County Agricultural Commissioner
and Sealer of Weights and Measures

Dear Mr. Dolan:

This is in response to your letter of November 12, 1969, in which you inquire into the legality of an ordinance now before the Board of Supervisors which amends Article I of Chapter 16 of the San Francisco Administrative Code relating to the consolidation of the duties of the County Agricultural Commissioner and the Sealer of Weights and Measures.

Both the County Agricultural Department and the Department of Weights and Measures are created and their functions, activities and affairs placed under the Chief Administrative Officer by Charter Section 61. Section 61 authorizes the Chief Administrative Officer to allocate the powers and duties of officers and employees among the departments under his direction, subject to Section 29 of the Charter. Section 29 authorizes the Chief Administrative Officer to combine the functions of departments under his authority. The consolidation of the two offices is, therefore, allowed by the Charter.

Both offices are county offices and, as such, have all the duties imposed by the general laws upon the said offices. (City Attorney's Letter Opinion No. 69-93, dated October 7, 1969.) In the administration of county affairs, the State Legislature has conferred certain powers on counties, one of which is contained in Section 24300 of the Government Code of the State of California which reads, in part, as follows:

Mr. Robert J. Dolan

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November 25, 1969

"By ordinance the board of supervisors may consolidate the duties of certain of the county offices in one or more of these combinations:

"(R) County agricultural commissioner and county sealer of weights and measures."

(See, also, City Attorney's Opinion No. 1417, dated February 10, 1960, which concludes that the offices of County Clerk and County Recorder can be combined.)

You are therefore advised that pursuant to the San Francisco Charter and Section 24300 of the Government Code, the Board of Supervisors, by ordinance, may consolidate the duties of County Agricultural Commissioner and Sealer of Weights and Measures and may designate the Agricultural Commissioner to succeed to the duties of the Sealer of Weights and Measures.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

December 1, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Property Taxation; Legality of
Proposal to Grant Tax Credit to
Senior Citizens on Tax Bill

Dear Mr. Dolan:

This is in response to your letter wherein you advise that Supervisor Dorothy von Beroldingen has requested my advice as to whether or not there is any prohibition in state law which would preclude the City and County granting a credit on the tax bill of persons over age 65 who are living on fixed modest incomes.

Article XIII, Section 1 of the California Constitution requires that all property in the state not expressly exempt under state or federal law be taxed in proportion to its value. This section is direct and mandatory (San Pedro, L.A. & S.L.R. Co. v. City of Los Angeles, 180 Cal. 18) and has been construed to require uniformity of taxation. (County of San Bernardino v. Way, 18 Cal. 2d 647.)

In County of San Bernardino v. Way, *supra*, the court, in discussing the requirement of uniformity of taxation, stated as follows:

" . . . It cannot be denied that the word 'taxation' as used in the constitution embraces both assessment and collection, and it would simply flout the rule of uniformity to say that the levy shall be uniform and equal, but that the collection may be variable and unequal . . ."
(18 Cal.2d 647, at p. 657.)

Accordingly, it is my opinion that the City and County could not grant a credit on the tax bill of a person over age 65 who is living on a fixed modest income.

Mr. Robert J. Dolan

2

December 1, 1969

Although it would appear that the tax credit approach would be violative of the constitutional requirement of uniformity of taxation, there appears to be another possible way to assist senior citizens caught in the spiraling property tax squeeze within constitutional bounds. In 1967, the State Legislature enacted the Senior Citizens Property Tax Assistance Law (Stats. 1967, ch. 963, sec. 103.5; Revenue and Taxation Code secs. 19501-19540) which grants some assistance to taxpayers over 65 years of age living on a limited income. Pursuant to the provisions of the Act, a claim for assistance for property tax paid can be filed after May 15 of the fiscal year for which assistance is claimed but on or before August 31. If the claim is approved, payment is made after June 30 and before November 30 in a sum equal to a percentage of the property tax accrued and paid by the claimant on the assessed value of his homestead up to and including \$5,000. The amount of assistance is based on the claimant's total household income and the percentage of assistance ranges from 95 per cent of the tax paid on the first \$5,000 of assessed value where the total household income is \$1,000 or less to 1 per cent of the tax paid on the first \$5,000 of assessed value where the total household income is \$3,350. However, no assistance may be allowed if the gross household income from all sources is \$10,000 or more.

Statistics provided by the State Franchise Tax Board which administers the program indicate that for the calendar year 1968, in the City and County of San Francisco, assistance in the amount of \$636,992 was granted to 3,576 claimants.

In my opinion, the City and County has authority to enact legislation similar to the State Act (Welfare and Institutions Code, secs. 17000-17409; San Francisco v. Collins (1932), 216 Cal. 187), and thus supplement the state assistance at the local level.

Very truly yours,

JJS

THOMAS M. O'CONNOR
City Attorney

December 1, 1969

Civil Service Commission
151 City Hall
San Francisco, California 94102

Attention: Mr. Harry Albert
Assistant General Manager, Personnel

Subject: Authority of Civil Service Commission
to Determine that Certain Temporary and
Limited Tenure Employees be Included in
Section IV(j) of the Salary Standardi-
zation Ordinance

Gentlemen:

This is in response to your letter of November 12, 1969, in which you inquire if there is any basis upon which the Civil Service Commission could determine that employees in Class 2906 Social Worker Trainee might qualify for premium pay under the present language of Section IV(j) of the Salary Standardization Ordinance.

Section IV(j) of the Salary Standardization Ordinance provides that additional compensation of \$15.00 per month may be granted to regular full-time permanent employees who are required, on a regular basis, to translate to and from a foreign language, subject to submission by the department of the need for such special service and approval by the Civil Service Commission.

Your request states that Class 2906 Social Worker Trainees are under temporary certification from the regular list or are certified under temporary limited tenure appointment.

Section IV(j) was the subject of City Attorney Opinion No. 69-87, dated October 6, 1969. The request in Opinion No. 69-87 was whether employees under temporary certification and limited tenure certification may be included in the definition of "regular full-time permanent employee" as used in Section IV(j). Opinion

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No. 69-87 held that they could not. This opinion was based upon the rules of the Civil Service Commission and certain Charter sections.

Your request of November 12, 1969, presents no facts which would alter my Opinion No. 69-87 in any way and since it asks the identical question asked previously, I must again conclude that under the language of Section IV(j), employees under temporary certification and limited tenure certification are not included.

Section IV(j) applies to "regular full-time permanent employees" and that phrase has been defined to include one who has been appointed to a full-time position from a list of eligibles and has completed his probationary period. The Civil Service Commission has no authority to determine otherwise.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

December 1, 1969

Civil Service Commission
151 City Hall
San Francisco, California 94102

Attention: Mr. Harry Albert
Assistant General Manager, Personnel

Subject: May Salary Standardization Ordinance be
Amended During Fiscal Year to Add Types
of Employees to Receive Extra Compensation
for Translating Services?

Gentlemen:

This is in response to your letter of November 3, 1969, in which you request my opinion as to whether Section IV(j) of the Salary Standardization Ordinance can be amended during the fiscal year to authorize the granting of additional compensation to temporary and limited tenure employees.

Section IV(j) of the Salary Standardization Ordinance provides that additional compensation of \$15.00 per month may be granted to regular full-time permanent employees who are required, on a regular basis, to translate to and from a foreign language, subject to submission by the department of the need for such special service and approval by the Civil Service Commission.

In Letter Opinion No. 69-37, dated October 6, 1969, I advised the Civil Service Commission that the phrase "regular full-time permanent employee" as used in Section IV(j), supra, did not include employees under temporary certification and limited tenure certification.

The Salary Standardization Ordinance cannot be amended during the fiscal year providing that the amendment relates to the schedule of compensation. (See City Attorney Opinions No. 69-95, dated October 27, 1969; No. 69-52, dated April 29, 1969; and No. 68-55, dated July 1, 1968.) These opinions are based upon the following paragraph of Charter Section 151:

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"A schedule of compensations or amendments thereto as provided herein which is adopted by the board of supervisors on or before April 1st of any year shall become effective at the beginning of the next succeeding fiscal year and a schedule of compensations or amendments thereto adopted by the board of supervisors after April 1st of any year shall not become effective until the beginning of the second succeeding fiscal year."

It is clear from the quoted language of Section 151 that any amendment to the Salary Standardization Ordinance after April 1st of any year which amends the schedules of compensations therein cannot be effective until the second succeeding fiscal year.

The proposed amendment as contained in your request does not affect the schedule of compensation. The additional compensation of \$15.00 per month is in the nature of a premium pay for the utilization of a skill by the City, the value of which has not been accounted for in the basic rates of compensation set for the particular classes performing the service.

The amendment merely allows the City to acquire interpreting services from employees other than regular full-time permanent employees and in no way amends the compensation to be paid.

The amendment does not violate the provisions of Charter Section 151 and is therefore an amendment to the Salary Standardization Ordinance which can be made without violating the restrictions contained in Section 151.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

December 2, 1969

Mr. S. M. Tatarian, Director
Department of Public Works
260 City Hall
San Francisco, California 94102

Subject: Civil Service Commission Has
Authority to Classify Position in
Accordance with Duties and Responsi-
bilities as Assigned by Department
Head

Dear Mr. Tatarian:

This is in response to your letters of November 3, 1969, and November 13, 1969, in which you question the authority of the Civil Service Commission in reference to the creation of a new classification in your department which is titled Chief Plan Checker. In addition to the above mentioned letters, I have also reviewed the Civil Service Commission staff reports on the matter. The staff reports are dated: April 25, 1969; June 21, 1969; August 22, 1969; October 17, 1969; and October 30, 1969. Included also is the Class Specification as proposed by the Commission for the new class of Chief Plan Checker.

Based upon the documents set forth above, the factual situation is as follows: The Civil Service Commission staff received a request from the Department of Public Works to survey a vacant position the Department had in the Class 6264 Plan Checker (Engineering) and that the position be reclassified to 6266 Senior Plan Checker. The position is located in the Bureau of Building Inspection. The basic difference between the two positions is the Senior Plan Checker is responsible for checking and inspecting the plans for major construction while the position of Plan Checker is concerned

Mr. S. M. Tatarian

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with minor construction. The request for reclassification was based upon a shift in the amount of major construction whereby it had increased 75 to 100 per cent in the last three years. The Civil Service staff recommended that the vacant position of 6264 Plan Checker be reallocated to the class of 6266 Senior Plan Checker. The Commission adopted the staff recommendation at its meeting of May 26, 1969. The staff report of June 21, 1969, states that a letter had been received which requested reconsideration of the Commission action. The request was that there either be only one position of Senior Plan Checker or that the Senior Plan Checker position occupied by Mr. Corenevsky be reclassified to Chief Plan Checker to support the supervisory authority of Mr. Corenevsky in the Plan Checking Department. The Department of Public Works informed the staff that the supervision of plan checking activities is assigned to the class of Building Plans Engineer and the class Senior Plan Checker has no supervisory authority. At its meeting of August 11, 1969, the Civil Service Commission confirmed its reclassification of 6264 Plan Checker to 6266 Senior Plan Checker and passed a motion to retitle the 6266 Senior Plan Checker (occupied by Mr. Corenevsky) to Chief Plan Checker. Thereafter, the Director of Public Works objected in writing to the action of the Commission in retitling the position of Senior Plan Checker to Chief Plan Checker. The Director stated that Mr. Corenevsky does not now nor will be in the future assigned supervisory duties in this position. On October 27, 1969, the

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Class Title: Plan Checker (Engineering) Code: 6264

Examples of Duties:

1. Checks plans and specifications for single and multiple dwellings, small apartments, and small industrial and commercial structures except structural engineering requirements; makes changes and revisions as indicated.

Class Title: Senior Plan Checker Code: 6266

Examples of Duties:

Checks plans and specifications for compliance with various building codes for complex and detailed major structures, except structural engineering requirements; makes changes and revisions as indicated. (See Class Specifications, CCSF. Vol. II.)

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Civil Service Commission directed the staff to prepare a new class specification for 6267 Chief Plan Checker. The new specifications were adopted by the Commission on November 10, 1969, and the Commission directed the Director of Public Works to submit a supplemental appropriation request relative to the change. The specifications for the new position of Chief Plan Checker - Code: 6267 contains language which gives this position supervisory authority over subordinate plan checking personnel.

The legal question involved is whether or not the Civil Service Commission exceeded its authority by the manner in which the new position and class 6267 Chief Plan Checker was created.

The powers and duties of the Civil Service Commission are set forth in Charter Section 141:

"The commission shall classify, and from time to time may reclassify, in accordance with duties and responsibilities of the employment, and training and experience required, all places of employment in the departments and offices of the city and county not specifically exempted by this charter from the civil service provisions thereof, . . .

"The commission shall also, in accordance with duties and responsibilities, allocate, and from time to time may reallocate, the positions to the various classes of the classification. The allocation or re-allocation of a position shall not adversely affect the civil service rights of an occupant regularly holding such position."

Section 141 leaves no doubt that the Civil Service Commission possesses the sole authority to classify and reclassify all places of employment in the various departments. There is, however, a restriction placed upon this power to classify and that is that it must be done "in accordance with duties and responsibilities of employment." Thus, in the instant matter if the duties and responsibilities of Senior Plan Checker were of a supervisory nature there would be no question that the Civil Service Commission has the authority to reclassify or create a new classification with job specifications to reflect the supervisory duties. But this is not the present case. The Department Head has stated that the position never has had nor will have supervisory duties and, in fact, he has placed these duties in a higher classification. In spite of the declarations of the Department Head, the Civil Service Commission has created a new position and given it supervisory

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duties. The question, then, concerns the extent of the authority of the Civil Service Commission over the duties and responsibilities of the position. It appears from the facts of this matter that the Civil Service Commission has, in effect, changed the duties and responsibilities of a position and thereafter created a new classification to conform to the new duties and responsibilities.

It is my opinion that the Civil Service Commission exceeded its authority in the manner in which it set forth the duties and responsibilities of the classification 6267 Chief Plan Checker.

There is no language in the Charter which grants the Civil Service Commission the authority to prescribe the duties of a position. There is direct authority to classify (§ 141, supra) but this direct grant of authority presupposes that the duties and responsibilities of the position have already been set. There is direct authority to allocate and reallocate positions (§ 141, supra) but, again, this direct grant of authority presupposes that the duties and responsibilities of the position have already been set. It logically follows that if the authority to set forth the duties and responsibilities of the various positions in the various departments of the City were to be lodged with the Civil Service Commission, it would have been simple to so state in Section 141, instead language is used which infers that the authority is lodged elsewhere.

Further support for the conclusion that the authority to set forth the duties and responsibilities does not rest with the Civil Service Commission is found in Charter Section 143:

"Positions in any department or office of the city and county may be created, as provided by this charter, by appropriation ordinance of the board of supervisors. Copy of each such ordinance creating or abolishing positions shall be filed, on the approval thereof, with the civil service commission by the clerk of the board of supervisors. Before the appointing officer shall make recommendation for the creation of any new or additional position in any department or office, he shall request and receive from the commission the proper designation and classification of such position based on the duties and responsibilities thereof, and if such position is included in the classified civil service, the commission

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may, in writing, express to the appointing officer its opinion as to whether or not such position is needed.

"Immediate notice in writing shall be given to the civil service commission by the appointing officer of each department and office of the city and county of the creation or abolition of any position, or of any change in duties if the position is included in the classified civil service, or of any appointment, resignation, suspension, dismissal or other creation of vacancy therein, with the date of any such change."

It is clear from Section 143 that in the creation of new positions the department head makes the recommendation for a new position and the Civil Service Commission merely gives it the proper designation and classification but the designation and classification, again, is "based on the duties and responsibilities" of the position, indicating that the Commission does not prescribe duties for a position. Section 143 further states that the appointing officer (i.e., department head) shall notify civil service of any change of duties of a position, indicating that the department head, rather than the Civil Service Commission, controls the duties of a position in his department.

Section 20 of the Charter defines the powers and duties of department heads. Section 20 states that each appointive department head shall be immediately responsible for the administration of his department. Inherent in being responsible for the administration of a department is responsibility for designating by whom and in what manner the various duties of the department are to be performed. Section 61 of the Charter places the functions, activities and affairs of the Department of Public Works under the Chief Administrative Officer and the powers and duties of officers and employees charged with specific jurisdiction of the Department of Public Works are under the jurisdiction of the Chief Administrative Officer, subject to Section 20. Neither Section 20 nor Section 61 qualifies the responsibility of department heads with any reference to Civil Service having authority to designate the duties of positions. (See also City Attorney's Opinion No. 623, dated November 3, 1952, in which it is stated that it is the right and duty of the department head to assign the duties of a position in his department.)

My conclusion is, therefore, that the department head has the responsibility for the assignment of duties within his

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department. This responsibility, of course, must be exercised within the framework of the civil service provisions of the Charter. This opinion should not be construed to deny authority to the Civil Service Commission to reclassify a position where duties are actually being performed which are not included within the present specifications of the position and these duties are performed with the concurrence of the department head.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

December 8, 1969

Mr. T. F. Conway
Purchaser of Supplies
270 City Hall
San Francisco, California 94102

Subject: Contract Proposal for Official
Advertising - Bid Price - All
Editions of Official Newspaper

Dear Mr. Conway:

You have asked for my advice as to whether, under the terms of the contract proposal for official advertising, the contractor would be required to publish notices in all editions of its newspaper, as required by law, at the bid price.

Acceptance of a valid bid on a contract proposal constitutes a binding contract (Lee C. Hess Co. v. Susanville, 176 Cal. App.2d 594; McQuillan, Municipal Corporations, § 29.80), and the specifications of the contract proposal would become part of the agreement. (See Taylor v. Palmer, 31 Cal. 240, 246.)

The contract proposal submitted by you along with your request for advice states by Section 29 that said proposal "covers official advertising for the City prescribed by the City Charter and the Laws of the State." Additionally, Section 32 of the proposal provides:

"All said official advertisements shall be published in all copies of one or more regular editions of the official daily newspaper, as required by law, which said edition or editions shall have an actual bona fide circulation in the City and County of San Francisco of at least eight thousand copies."

Under the Charter, a publication in a single edition of the official newspaper of the City and County, provided that the edition contains substantially the same news features and editorials as the other editions, is distributed generally to

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subscribers and the public with a circulation of at least 8,000 copies, is all that is required. (See City Attorney's Letter Opinion No. 66-34-A, dated May 16, 1966.) However, under laws of the State publication in more than one edition of an official newspaper may be required. For example, under Section 8, Article 11, of the State Constitution, Charter amendments are required to be published in every edition of the official newspaper on the day of publication.

The bid sheet of the contract proposal calls only for one bid price for each line set and published on six point type slug solid per line, without regard to whether publication will be in one or more editions.

If the language of a contract is clear and explicit, and does not lead to an absurd result, the language must govern its interpretation. (See Oberg v. City of Los Angeles, 132 Cal.App.2d 151, 158; Civ. Code § 1638.) In my opinion it clearly appears that the terms of the contract proposal would require the successful bidder to publish official advertising in one or more editions, as required either by Charter or State law, for the bid price per each line set.

You are advised, therefore, that the contractor would have the obligation to publish official advertising in all editions of the official newspaper, where required by law, at no additional charge above that specified in the bid.

Very truly yours,

EAB

THOMAS M. O'CONNOR
City Attorney

December 9, 1969

Mr. Harry Albert, Assistant
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Re: Port Commission Employees; Retention of
Retirement, Health, Sick Leave and Vacation
Benefits Upon Transfer to Another Department

Dear Mr. Albert:

This is in reply to your letter dated November 21, 1969, in which you requested my opinion as to whether Port Commission employees who transfer to other City departments would retain the rights and benefits afforded to them as employees of the San Francisco Port Authority upon transfer of the Port to the City and County of San Francisco.

As you know, the transfer of the Port and the rights of the transferred employees are governed by Sections 48.2, 48.3 and 48.4 of the Charter, the provisions of the "Burton Act" (Stats. of 1968, ch. 1333), and an agreement entered into between the State of California and the City and County in implementation of that Act.

Section 20 of the Burton Act provides that salary, employment conditions, and benefits of the transferred employees shall be no less than those which they received as employees of the Port Authority and, with respect to retirement and health benefits, provides specifically that:

"These rights and benefits include, but are not limited to: . . . continued membership in the Public Employees' Retirement System provided by the City and County of San Francisco, or any other retirement program in effect with the San Francisco Port Authority; . . . retention of the option to continue any present health insurance and group life coverage."

Mr. Harry Albert

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that: Likewise, Section 48.4 of the Charter provides in part

"All employees of the Port Authority who, at the time of the transfer provided for herein shall go into effect, are members of the Public Employees' Retirement System of the State of California shall continue to be members of said Public Employees' Retirement System, with all the rights, privileges and benefits of said system and they shall not be members of the San Francisco City and County Employees' Retirement System; and, notwithstanding any other provisions of this charter, the city and county shall perform all acts necessary to continue the membership of such employees in said Public Employees' Retirement System."

With respect to sick leave and vacation, the agreement provides (at page 25) as follows:

"The Act provides for the retention by the transferred employees of salary, employment conditions and benefits. At the present time permanent State employees have equal or greater sick leave and vacation privileges than provided for by City civil service. To carry out the provisions of the Act the City shall permit the transferred employees to carry over to City service all accumulated sick leave and to continue to accumulate sick leave as the employee would have accumulated that sick leave had he remained in State service. Vacation rights shall likewise be carried over. Where the employee has greater vacation rights under State service he shall continue to accrue vacation rights in the same manner and to the same extent as if he had remained in State service."

From the foregoing it is clear that those persons who were employees of the Port Authority on February 7, 1969, the date of the Port's transfer to the City and County, are entitled to remain members of the Public Employees' Retirement System and to retain the health coverage they had as employees of the Port Authority. Also, they are entitled to carry over and accumulate sick leave and vacation benefits as if they had remained in the employ of the Port Authority.

Retirement, health coverage, vacation and sick leave rights afforded to an employee of the Port Authority who transferred to the City are personal to the employee and are not

Mr. Harry Albert

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dependent upon his remaining an employee of the Port Commission. Consequently, such an employee who transfers to another department does not lose these rights.

You are advised accordingly.

Very truly yours,

DJG

THOMAS M. O'CONNOR
City Attorney

December 12, 1969

Mr. Robert J. Dolan, Clerk
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Creation of Staff of Budget Analysts

Dear Mr. Dolan:

This is in reply to your letter presenting certain questions regarding the creation of a staff of budget analysts in the office of the Board of Supervisors.

Please be advised that a staff of budget analysts, subject to the civil service provisions of the Charter, could be created in the office of the Board of Supervisors by means of an appropriation ordinance.

"CREATION OF POSITIONS

"Section 143. Positions in any department or office of the city and county may be created, as provided by this charter, by appropriation ordinance of the board of supervisors."

However, a Charter amendment would be required for the creation of a staff of budget analysts exempt from the civil service provisions of the Charter.

"POSITIONS

"Section 142. All positions in all departments and offices of the city and county, including positions created by laws of the State of California, where the compensation is paid by the city and county, shall be included in the classified civil service of the city and county, . . ."

Very truly yours,

December 18, 1969

Mr. George J. Grubb
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Amendment of Compensation Schedule
During Current Fiscal Year

Dear Mr. Grubb:

This is in reply to your request for an opinion relating to the following matter: You have advised me that four new classifications for the New Careers Program were included in the 1969-70 budget. (2901 Social Service Assistant I (New Careers), 3611 Library Assistant (New Careers), 3597 School Aide and 9961 Community Health Worker I), and the salaries for those classes were fixed in the budget at compensation schedule \$442-539. These new classes were established subsequent to salary standardization for the fiscal year 1969-70. The employees in the subject classes have requested an increase in salary to be effective during the current fiscal year.

You have asked my opinion whether any authority exists for amendment of the compensations fixed for the subject classes during fiscal year 1969-70.

Section 71 of the Charter provides in part:

"All increases in salaries or wages of officers and employees shall be determined at the time of the preparation of the annual budget estimates and the adoption of the annual budget and appropriation ordinances, and no such increase shall be effective prior to the fiscal year for which the budget is adopted. . . ."

Compliance with Section 71 of the Charter is mandatory and any increase in the salary scale beyond the amount provided

Mr. George J. Grubb

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in the approved budget is void. (Sullivan v. McKinley, 14 Cal.2d 113, 117.) In the Sullivan case, the Board of Supervisors enacted an ordinance increasing the salary of certain city employees beyond the amount fixed in the approved budget for those positions. The District Court of Appeal held that the ordinance increasing the employees' salary was invalid because the mandatory prerequisites to its enactment were not followed. The court stated at page 117:

"No ordinance is valid unless and until the mandatory prerequisites to its enactment and performance are substantially observed. . . .

"Section 71 of the Charter provides: "All increases in salaries or wages of officers and employees shall be determined at the time of the preparation of the annual budget estimates and the adoption of the annual budget and appropriation ordinances, and no such increase shall be effective prior to the fiscal year for which the budget is adopted. . . ."

"The time for establishing an increase in wage rate of municipal employees, such as the petitioner and his eight companions, is before the passage of the annual salary ordinance. And the instruments within which the increase of the rate of wage is to be expressed are (1) annual budget estimates, (2) annual budget, and (3) appropriation ordinance. Once the budget is approved by the Board of Supervisors, the fiscal terms of the annual appropriation ordinance and the annual salary ordinance are automatically fixed beyond the power of change by any amendment. Any effort of the Board of Supervisors to increase a wage scale in the annual salary ordinance over the amount provided in the approved budget is void."

The salary for the subject classes was established in the budget for 1969-70 and under the provisions of Section 71 of the Charter, it cannot be increased during the current fiscal year.

It should be noted that the Civil Service Commission has the power to reclassify any position in accordance with the duties and responsibilities of the employment (Section 141, Charter), and the Commission "shall from time to time prepare and submit to the board of supervisors and the board shall adopt amendments to the schedule of compensations which are necessary to cover any new

Mr. George J. Grubb

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classifications added by the civil service commission." (Section 151, Charter.) Accordingly, if the duties or responsibilities of the subject classes or the training or experience required have changed since their establishment, the Civil Service Commission has the power to reclassify the positions and to submit to the Board of Supervisors any amendments to the schedule of compensations made necessary by the reclassification. (Section 141, Charter.) The amendment to the schedule of compensations would be effective during the current fiscal year to change the salaries of the reclassified positions.

You are thus advised.

Very truly yours,

MCK

THOMAS M. O'CONNOR
City Attorney

December 23, 1969

Thomas J. Cahill, Chief
San Francisco Police Department
850 Bryant Street
San Francisco, California 94103

Attention: Mr. Alfred G. Arnaud
Assistant Deputy Chief

Subject: Constitutionality of Charter Provisions
and Ordinances Regarding Peddling
Your File No. L-94

Dear Chief Cahill:

This is in response to your request for an opinion concerning the constitutionality of San Francisco Charter provisions and ordinances with regard to regulating the street peddling of balloons in the Fisherman's Wharf area.

The pertinent Charter and Municipal Code provisions are hereinafter set forth:

Charter Section 24:

"The board of supervisors shall regulate, by ordinance, the issuance and revocation of licenses and permits for the use of, obstruction of or encroachment on public streets and places, exclusive of the granting of franchises governed by other provisions of this charter; and for the operation of business or privileges which affect the health, fire-prevention, fire-fighting, crime, policing, welfare or zoning conditions of or in the city and county, and for such other matters as the board of supervisors may deem advisable."

Section 869 of the Police Code:

"It shall be unlawful for any person to peddle goods, wares or merchandise, or any article, material

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or substance, of whatsoever kind on public streets, unless duly licensed so to do."

The following sections of Part III of the San Francisco Municipal Code (License Code):

"SEC. 1. Designating Departments for Issuance of Permits.

"Permits shall be issued for the location and conduct of the businesses, enterprises or activities, enumerated hereinafter in Sections 1.1 to 1.72 inclusive, by the department or office authorized by Sections 1.1 to 1.72 inclusive and Section 2 of this article to issue each such class of permit, and subject to the approval of other departments and offices of the city and county, where specifically designated in any such case; provided that permit or license fees as required by ordinance shall be collected by the Tax Collector as provided in Section 3 of this article."

"SEC. 1.36. For peddling--by the Police Department."

"SEC. 132. Peddlers, General. Every person who peddles goods, wares or merchandise, or any other article in any manner, save and except those who peddle the articles or things specifically mentioned and for the peddling of which a license is provided in subsections (a), (b) and (c) of this section, shall pay a license tax of Twelve (\$12.00) Dollars per quarter. . . ."

"SEC. 26. Facts to Be Considered by Departments. In the granting or denying of any permit, or the revoking or the refusing to revoke any permit, the granting or revoking power may take into consideration the effect of the proposed business or calling upon surrounding property and upon its residents, and inhabitants thereof; and in granting or denying said permit, or revoking or refusing to revoke a permit, may exercise its sound discretion as to whether said permit should be granted, transferred, denied or revoked."

Charter Section 35.6:

"The chief of police may refuse to issue any permit that is subject to police department investigation and

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issuance, if it shall appear that the character of the business or the applicant requesting such permit does not warrant the issuance thereof, or he may revoke any such permit as soon as it shall appear that the business or calling of the person to whom it was granted is conducted in a disorderly or improper manner, or that the place in which the business is conducted or maintained is not a proper or suitable place in which to conduct or maintain such business or calling."

Also to be noted are the provisions of Section 39 of the Charter and Section 30 of the License Code providing for appellate review and hearing upon the denial of a license or permit.

There is no discrimination shown in any of the foregoing provisions of law, nor any vagueness or uncertainty and I cannot perceive how any constitutional questions could be raised on these points.

There likewise can be no constitutional question on the right and power of the City to thus regulate the use of its public streets. See In re Mares, 75 Cal.App.2d 798 (solicitation of magazine subscriptions on public streets); Wade v. City and County of San Francisco, 82 Cal.App.2d 337 (same); People v. Galena, 24 Cal.App.2d Supp. 770 (taxicab stands); In re Peterson, 51 Cal.2d 177 (same). As stated in the case of In re Mares, supra, pp. 801, 802:

"The place for the conduct of a private business is upon private property; and it has been said that there is no vested right to do business upon the public streets' (Pittsford v. City of Los Angeles, 50 Cal.App.2d 25, 32 [122 P.2d 535], and see text therein quoted and cases cited.) 'It is well established law that the highways of the state are public property; . . . and that their use for purposes of gain is special and extraordinary, which generally at least, the legislature may prohibit or condition as it see fit [citations].' (Stephenson v. Binford, 287 U.S. 251, 264 [53 S.Ct. 181, 77 L.Ed. 288, 294, 37 A.L.R. 721].) 'Use of a public street for private enterprise may under some circumstances redound to the public good; but nevertheless it is a special privilege peculiarly subject to regulation, and one which may be granted on reasonable terms or entirely withheld [citations].' (People v. Galena, 24 Cal.App.2d Supp. 770, 775

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[70 P.2d 724].) (Emphasis thus far is ours.) Numerous authorities support these statements."

" . . .

"The instant case, in our opinion, presents a situation as clearly within the exercise of the police power as that presented in the Galena case, supra. The difference between the control of taxicab stands and the control of sidewalk traffic is simply a difference in degree. In our opinion when the supervisors ordained absolute prohibition rather than mere regulation they dealt with a matter directly related to the public peace, safety, convenience, comfort and welfare."

With reference to the discretion vested in the Chief of Police to issue or deny a permit, it is a general principle of law that delegated powers to municipal officers or boards must be made subject to prescribed standards and that absolute discretion to grant or deny licenses or permits may not ordinarily be vested in such officials or boards. However, this principle is subject to the qualification that where a business is subject to police surveillance and regulation broad discretion, unrestricted by specific standards, may be vested in boards or officials to confer or deny licenses or permits. See In re Holmes, 187 Cal. 640, 646, 647; In re Peterson, supra, pp. 184, 185; Iscoff v. Police Commission, 222 Cal.App.2d 395.

In the Iscoff case, the general standards set forth in Section 26 of the License Code and Section 35.6 of the Charter with relation to the issuance of licenses or permits by the Chief of Police were directly sustained by the court as satisfying constitutional tests. Thus, the court states, pp. 404, 405:

" . . . In the instant case, section 24 of the San Francisco Charter now in effect directs the regulation by ordinance of the issuance and revocation of licenses and permits for the operation of businesses affecting the health, crime, policing and welfare of the city. As we have already pointed out, appellant's business answers such description. (7 McQuillin, op. cit., §24.335, pp. 231-234.) The chief of police is invested with the power to issue or refuse permits for the business here in question (San Francisco Municipal Code, pt. III, art. I, §1) along with the power to inspect its

Thomas J. Cahill

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books and premises (San Francisco Charter, §24) and to refuse such permit if the character of the business or of the applicant does not warrant its issuance. (San Francisco Charter, §35.6.) The chief of police in granting, refusing or revoking a permit may consider the effect of the proposed business upon the surrounding property and its residents and in taking such action may exercise his sound discretion. (San Francisco Municipal Code, pt. III, art. 1, §26.) Sound discretion in this instance, as with that contemplated by law or conferred on the courts, is not a capricious or arbitrary one. (Cf. Bailey v. Taaffe (1866) 29 Cal. 422, 424; Kalmus v. Kalmus (1951) 103 Cal.App.2d 405, 415 [230 P.2d 57], cert. denied, 342 U.S. 903 [72 S.Ct. 292, 96 L.Ed. 676].) In short, the foregoing sections of the city's charter and ordinances fashion and provide an overall standard governing and guiding the chief of police and prescribing that the exercise of his permit power must not be arbitrary but rather directed to the promotion of the public interest. Appellant argues that this constitutes only a general and therefore inadequate standard and that specific standards, even of a minimum nature, are here nonexistent. The simple answer is that in the regulation of the business here involved, specific standards are not necessary. (In re Peterson, supra, 51 Cal.2d 177; In re Holmes, supra, 187 Cal. 640; 9 McQuillin, op. cit., §26.66.) We therefore hold that the overall standard alluded to above is adequate and that the ordinances here applicable do not offend against constitutional principles.

"Furthermore in the instant case the standard which governs and guides the board of permit appeals is precisely the same as that which governs and guides the chief of police at the primary administrative level and is therefore adequate and lawful for such board in the exercise of its appellate function. (City & County of San Francisco v. Superior Court (1959) 53 Cal.2d 230, 250, 252 [1 Cal.Rptr. 158, 347 P.2d 294]; Lindell Co. v. Board of Permit Appeals (1943) 23 Cal.2d 303, 313-314 [144 P.2d 4].)"

In the Iscoff case the regulation was of a business conducted on private premises. Here the regulation is of the use of the streets involving an activity with a potential for the obstruction of streets, interference with pedestrian traffic,

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creation of a nuisance and also fraud on the public. For a stronger reason, then, it can be stated that the general standards guiding the police chief in issuing permits for street peddling satisfy constitutional requirements.

In summation, then, you are advised that I can find no constitutional infirmity in any of the Charter or Municipal Code provisions regulating street peddling and, in my opinion, these provisions are constitutional and enforceable.

Very truly yours,

MHM

THOMAS M. O'CONNOR
City Attorney

December 29, 1969

Civil Service Commission
151 City Hall
San Francisco, California 94102

Attention: Mr. Harry Albert
Assistant General Manager, Personnel

Subject: Obligation of Civil Service Commission
Where Port Commission Employee Appeals
a Disciplinary Action by Appointing
Officer of the Port Commission

Gentlemen:

This is in response to your letter in which you request advice regarding the obligation of the Civil Service Commission to hear an appeal of a Port Commission employee from a suspension action by the appointing officer of the Port.

The employee has appealed directly to the Civil Service Commission from a suspension by the Port Director pursuant to the authority granted the Port Director in Charter Section 154. The contention of the employee is that all employees of the Port who were transferred to the City are entitled to the same rights they had before the transfer and that this applies to substantive, as well as procedural rights. Therefore, the employee contends, if suspensions were previously subject to hearings before the State Personnel Board, a hearing before the equivalent body, namely, the Civil Service Commission, is an absolute requirement.

The rights of Port employees are set forth in Charter Section 48.4; Section 20 of Statutes of 1968, Chapter 1333; and Paragraph XIII of the Agreement relating to transfer of the Port of San Francisco from the State of California to the City and County of San Francisco recorded on January 30, 1969, in Book B308, Page 686, of the official records of the City and County of San Francisco.

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Section 20 of the Statutes of 1968 clearly makes Port employees of the state, upon transfer of the Port, City employees who hold their positions subject to the civil service provisions of the City Charter. Paragraph VIII of the Agreement sets forth in some detail the rights the Port employees retain upon entering City service. These rights are in the nature of retirement benefits, health insurance, vacation, sick leave and seniority rights. Nowhere are they afforded any procedural rights they may have possessed in state employment with reference to disciplinary procedure nor is there any language in any of the documents from which this inference can be drawn.

I am of the opinion that Port employees are subject to the provisions of Charter Section 154. The disciplinary action having been taken pursuant to the last paragraph of Section 154 is final and the Civil Service Commission is not obliged to hear the appeal.

Very truly yours,

TAT

THOMAS M. O'CONNOR
City Attorney

December 31, 1969

Mr. Joseph E. Tinney
Assessor
101 City Hall
San Francisco, California 94102

Subject: Property Tax Church Exemption
of St. Peter's Church

Dear Mr. Tinney:

This office has reviewed the "challenge" to the property tax exemption of St. Peter's Church (Parcel 2-69-26) which you forwarded to this office. After reviewing this document, it is my opinion that you have correctly granted the church exemption to the Roman Catholic Church of St. Peter's and that the activity which occurred therein on July 20, 1969, would in no way affect the tax exempt status of that church.

Article XIII, Section 1-1/2 of the Constitution of the State of California exempts church property from taxation when the same is "used solely and exclusively for religious worship . . ." This phrase has been interpreted in a number of similar cases, for instance, Serra Retreat v. County of Los Angeles, (1950) 35 Cal.2d 755; St. Germain Foundation v. County of Siskiyou (1963) 212 Cal. App. 2d 911; Fellowship of Humanity v. County of Alameda (1957) 152 Cal. App. 2d 496; House of Rest v. County of Los Angeles (1957) 151 Cal. App. 2d 523; and San Francisco Boys' Club, Inc. v. County of Mendocino (1967) 254 Cal. App. 2d 548.

All of the above cited cases hold in connection with the interpretation of tax exemption laws that "the rule of strict construction generally applicable to tax exemption laws must prevail . . . , but adherence to such legal principle does not require the narrowest possible meaning be given to the exempting language if it would establish too severe a standard and defeat the apparent object of the law. Rather, the construction of the law though strict must also be reasonable." Y.M.C.A. v. County of Los Angeles, 35 C. 2d 760 at page 767, citing Cedars of Lebanon Hospital v. County of Los Angeles, 35 C. 2d 729.

Mr. Joseph E. Tinney

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In the case of Fellowship of Humanity v. County of Alameda, 153 Cal.App.2d 673, the appellate court affirmed the trial court's decision to refund taxes due to an improper refusal by the taxing agency to grant this humanist society the church exemption. In doing so it clearly affirmed the trial court's decision that topics of interest to humanist including "topics of current political and economic interest" are properly discussed by a church entitled to the church exemption.

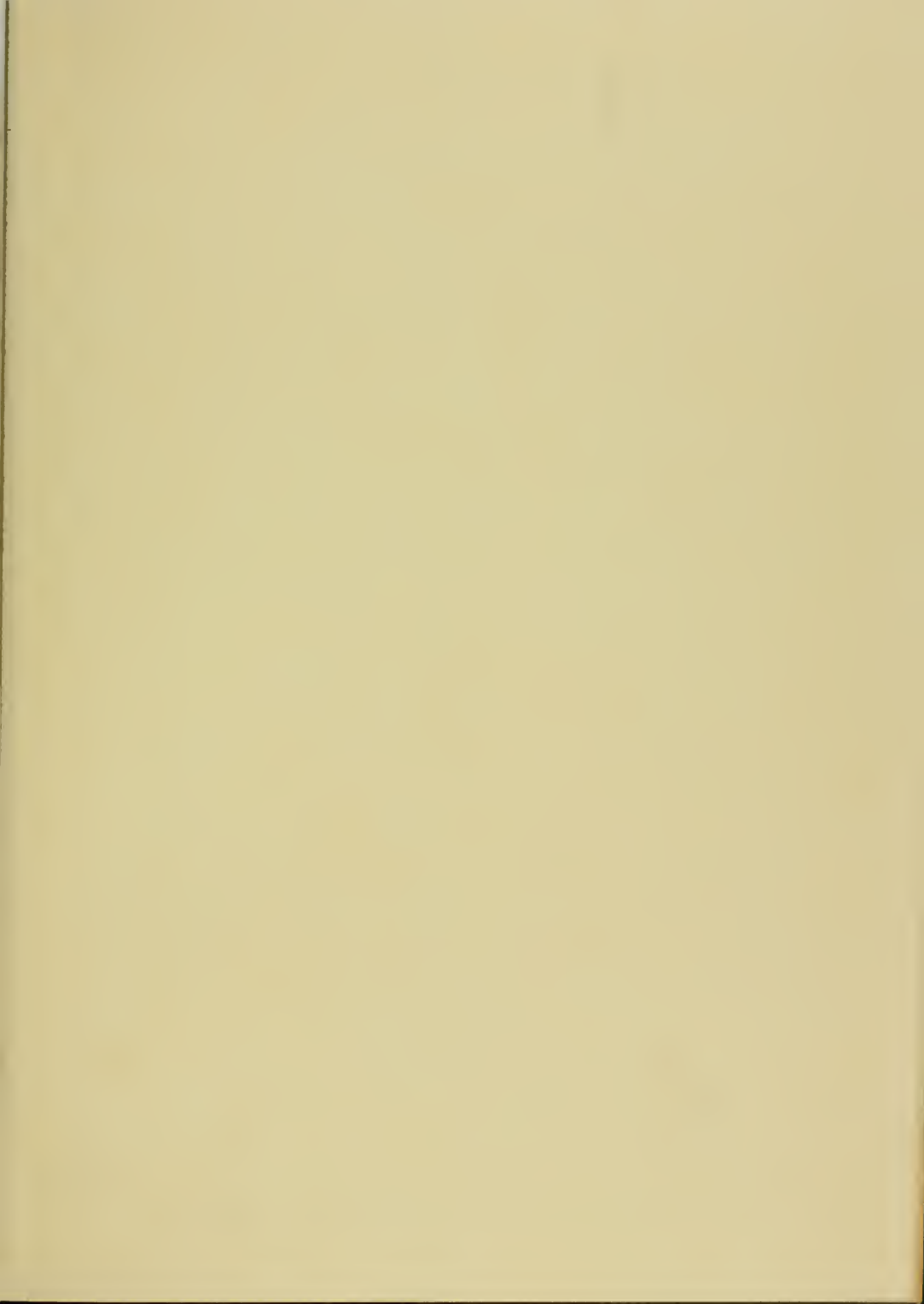
You are advised therefore that the activities set forth in the "challenge" to the property tax exemption of St. Peter's Church do not change the character or affect the exemption granted by you to St. Peter's Church.

Very truly yours,

WJM

THOMAS M. O'CONNOR
City Attorney





JUN 23 1970

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